

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	Case No. 1:20-cv-00969-DAE
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	

**DEFENDANT INTERNATIONAL BUSINESS MACHINES CORPORATION'S
MOTION TO EXCLUDE EXPERT REPORT AND TESTIMONY OF MARK RAMBIN**

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
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v.)	Case No. 1:20-cv-00969-DAE
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)	
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**DEFENDANT INTERNATIONAL BUSINESS MACHINES CORPORATION’S
MOTION TO EXCLUDE EXPERT REPORT AND TESTIMONY OF MARK RAMBIN**

DECLARATION OF EDWARD M. “TED” SMITH

1. I am a Partner at Cornell Smith Mierl Brutocao Burton, LLP. I am serving as lead counsel of record for Defendant International Business Machines Corporation (“IBM”) in the above-captioned matter. I make this statement based on my personal knowledge and familiarity with the discovery documents in this matter. I am over 18 years old and am otherwise competent to make this declaration.

2. Attached as Exhibit A to this declaration is a true and correct copy of excerpts of the deposition transcript and associated exhibits excerpts of Mark Rambin, which was taken on May 12, 2022.

3. Attached as Exhibit B to this declaration is a true and correct copy of Mark Rambin’s Expert Report in this matter, which is dated February 15, 2022.

4. Attached as Exhibit C to this declaration is a true and correct copy of excerpts of the deposition transcript of Dwight Steward, Ph.D., which was taken on May 13, 2022.

5. Attached as Exhibit D to this declaration is a true and correct copy of excerpts of

the deposition transcript of Plaintiff Titon Hoque, which was taken on January 27, 2022.

6. Attached as Exhibit E to this declaration is a true and correct copy of excerpts of the deposition transcript of Plaintiff Janet Gelphman, which was taken on January 21, 2022.

7. Attached as Exhibit F to this declaration is a true and correct copy of excerpts of the deposition transcript of Plaintiff Charles Townsley, which was taken on December 9, 2021.

8. Attached as Exhibit G to this declaration is a true and correct copy of excerpts of the deposition transcript of Plaintiff Thanh Do, which was taken on January 11, 2022.

My full name is Edward M. “Ted” Smith, my date of birth is December 19, 1968, and my work address is Cornell Smith Mierl Brutocao Burton, LLP, 1607 West Avenue, Austin, Texas 78701.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Travis County, State of Texas, on the 26th day of May, 2022.

Signed: /s/Edward M. “Ted” Smith
Edward M. “Ted” Smith

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**DEFENDANT INTERNATIONAL BUSINESS MACHINES CORPORATION'S
MOTION TO EXCLUDE EXPERT REPORT AND TESTIMONY OF MARK RAMBIN**

EXHIBIT A to Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHARLES TOWNSLEY, MICHAEL \$
SAURO, WALTER NOFFSINGER, \$
ROSA DAVIDSON, MICHAEL \$
KELLY, TITON HOQUE, JANET \$
GELPHMAN, THANH DO, \$
\$
Plaintiffs, \$ CASE NUMBER
\$ 1:20-CV-00969-LY
v. \$
\$
INTERNATIONAL BUSINESS \$
MACHINES CORPORATION, \$
\$
Defendants. \$

* * * * *

THE VIDEOTAPED ORAL DEPOSITION OF
MARK RAMBIN
May 12, 2022
(Reported Remotely)

* * * * *

ORAL DEPOSITION OF MARK RAMBIN produced as a
witness at the instance of the Defendant and duly
sworn, was taken in the above styled and numbered cause
on the 12th day of May 2022, from 9:32 a.m. to 12:58
p.m., before Sandra S. Givens, CSR, in and for the
State of Texas, reported by machine shorthand method
pursuant to the Federal Rules of Civil Procedure, with
all parties participating via Zoom.

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A P P E A R A N C E S

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Mr. Rick Rienstra
rwrienstra@clsvideo.com

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1 VIDEOGRAPHER: We are on the record
2 May 12th, 2022. The time is approximately 9:32 a.m.
3 Would counsel like to identify yourselves for the
4 record? And we can start with Mr. Pringle.
5 MR. PRINGLE: My name is Ross
6 Pringle. We represent the plaintiffs in this lawsuit.
7 MR. SMITH: And my name is Ted
8 Smith, and I represent the defendant IBM.
9 VIDEOGRAPHER: All right. The
10 court reporter today is Sandy Givens, and she will now
11 swear in the witness.
12 MARK RAMBIN,
13 having been first duly sworn, testified as follows:
14 EXAMINATION
15 BY MR. SMITH:
16 Q Good morning, Mr. Ramin. As I mentioned
17 earlier, my name is Ted Smith, and I represent the
18 defendant in this case, IBM. Do you understand that
19 you have been presented as an expert witness in this
20 case on behalf of the plaintiffs?
21 A Yes.
22 Q Have you had your deposition taken before?
23 A Yes.
24 Q How many times?
25 A I have no way of knowing, but I've been doing

Page 5

1 this kind of work for the last 35 years. So it's got
2 to be somewhere over a hundred times.
3 Q Okay. So you're obviously cognizant of and
4 aware of, of how these depositions work, but just to
5 make sure we're on the same page, obviously you
6 understand that you're under oath today, correct?
7 A Yes.
8 Q And you understand that although we're
9 conducting this deposition by Zoom remotely that your
10 testimony carries the same weight as if we're in a
11 court of law, correct?
12 A Yes, sir.
13 Q And this is not a -- I don't think this is
14 going to be a particularly long deposition today, and
15 you're welcome to take as many breaks as you like. The
16 only thing that I would ask is if there's a question on
17 the table, if you would answer that question before we
18 take the break. Is that fair?
19 A That is fair.
20 Q And again, you know, we're doing this by
21 Zoom, so I think it's particularly important to make
22 sure that we're not talking over each other so that
23 Ms. Givens can make sure that she gets a clean record.
24 I'll certainly try to do that on my part and would ask
25 if you would do the same.

Page 6

1 A Yes, sir.
2 Q Great. Mr. Ramin, you have a degree in
3 business administration; is that correct?
4 A Yes. Accounting.
5 Q And is that a bachelor's degree?
6 A Yes, it is.
7 Q And did you receive that degree in 1983?
8 A No. I received it in 1980.
9 Q '80. Okay. 1980.
10 A Yes. I became a CPA in 1983, so that may be
11 where that question came from.
12 Q Okay. So you received your bachelor's in
13 business administration accounting in 1980, and you
14 became a CPA in 1983; is that right?
15 A That's, that is correct.
16 Q Do you have any master's degrees?
17 A No.
18 Q Do you have any doctorate degrees?
19 A No.
20 Q Do you have any degrees in economics?
21 A No.
22 Q Do you have any degrees in statistics?
23 A No.
24 Q Have you ever provided expert testimony or an
25 expert opinion in an employment-related, in an

Page 7

1 employment-law-related lawsuit or proceeding?
2 A I'm having a hard time distinguishing that.
3 I believe so, but it's, it's possible that it related
4 to these matters related more to, more to personal
5 injury or, or medical malpractice, but I believe that
6 there was employment-related.
7 Q Okay. Well, let me see if I can be a little
8 more pointed. Have you, have you ever provided expert
9 testimony or an expert opinion in a lawsuit or
10 proceeding that involved claims of discrimination?
11 A I, I can't precisely recall that.
12 Q So sitting here today you can't recall a
13 single lawsuit or proceeding in which you provided
14 expert testimony or an expert opinion that involved
15 claims of employment discrimination?
16 A Not as I'm sitting here.
17 Q Is it possible that this is the first lawsuit
18 or proceeding in which you are providing expert
19 testimony or expert opinion that involves employment
20 discrimination?
21 MR. PRINGLE: Objection, form.
22 A I, I can't, I can't rule that out.
23 Q (By Mr. Smith) So it's possible?
24 A It is possible.
25 Q And have you ever provided expert testimony

Page 8

1 or an expert opinion in a lawsuit or proceeding that
2 involved age discrimination claims?
3 A Not that I recall.
4 Q So is it possible that this is the first
5 lawsuit or proceeding involving age discrimination
6 claims in which you are providing expert testimony or
7 an expert opinion?
8 A I believe that's right.
9 MR. SMITH: If you could go ahead
10 and have marked as the first exhibit, this is going to
11 be, Richard, Tab 3 of the general exhibits. It's the
12 expert report of Mark Ramin.
13 (Exhibit No. 1 marked off the
14 record.)
15 Q Mr. Ramin, did you, did you provide an
16 expert report in this lawsuit?
17 A Yes.
18 Q And is this the expert report that you
19 provided in this lawsuit as Exhibit 1?
20 A It appears to be.
21 MR. SMITH: If we could go to --
22 Q Well, let me, let me ask you this first.
23 Mr. Ramin, what, what did you do to prepare for this
24 deposition today?
25 A I, I read my, read my report, I read

Page 9

1 Dr. Steward's information, I went -- I had a meeting
2 with Mr. Pringle yesterday.
3 Q And when you say that you reviewed
4 Mr. Steward's information, are you referring to the
5 expert reports that Mr. Steward provided in this
6 lawsuit?
7 A Yes.
8 Q So, so you're familiar with those reports
9 that Mr. Steward provided?
10 A Yes. I, I can't say that I, that I've
11 studied them in, in great detail, but I've read through
12 them.
13 Q Okay. And how long did you meet with
14 Mr. Pringle?
15 A Probably two hours.
16 Q Was there anyone else present in that meeting
17 other than Mr. Pringle?
18 A No.
19 Q Mr. Ramin, if we could look --
20 MR. SMITH: If we could go to page
21 4, I believe, of this exhibit.
22 Q Do you see paragraph 18? It refers to
23 "Employment Fringe Benefits"?
24 A Yes.
25 Q And in it it says, "In addition to direct

Page 10

1 compensation, the Plaintiffs received fringe benefits
2 from IBM in the form of paid leave, insurance, other
3 legally required benefits such as social security
4 contribution among" -- "contributions, among others."
5 Did I read that correctly?
6 A Yes.
7 Q And then the report goes on to state, "These
8 fringe benefits have been calculated as a percentage of
9 compensation based upon statistics compiled by the
10 Bureau of Labor Statistics." Did I read that
11 correctly?
12 A Yes.
13 Q And is that how you calculated the percentage
14 of fringe benefits, based it on the Bureau of Labor
15 Statistics?
16 A Yes, I did.
17 Q And as you can see, there is a footnote 4
18 there; is that right?
19 A I, I can't really read it, but I, I see
20 there's a footnote 4.
21 Q Okay. So if we go to footnote 4, the
22 citation is to "U.S. Department of Labor. Bureau of
23 Labor Statistics. Employer Costs for Employee
24 Compensation - December 2020"; is that right?
25 A That's correct.

Page 11

1 Q Okay. And is that the publication that you
2 utilized in order to provide an opinion on fringe
3 benefits with regards to these plaintiffs?
4 A Yes, it is.
5 MR. SMITH: If we could go to Tab 2
6 of the universal documents, Richard, and we may need to
7 make that a little bit bigger if we can. And I'd like
8 to have this marked as Exhibit No. 2, please.
9 (Exhibit No. 2 marked off the
10 record.)
11 Q Mr. Ramin, is this the publication that you
12 were referencing in footnote number 4 of the report,
13 "Employer Costs for Employee Compensation - December
14 2020" from BLS?
15 A I believe so. I can't see the tables that I
16 utilized yet, but I believe that is the, that is the
17 document.
18 Q Okay. And Mr. Ramin, would you agree with
19 me that for all of the plaintiffs in your expert report
20 you utilized a percentage of 44.38 percent to calculate
21 lost benefits? Is that right?
22 A I, I used 44.38 for positions that had, that
23 had benefits. I used -- utilized zero for those that
24 did not.
25 Q Okay. But you, but you utilized 44.38

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3 (Pages 9 to 12)

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1 percent for all of the plaintiffs in this case; isn't
2 that right?

3 A With respect to their IBM compensation,
4 that's correct.

5 Q Well, and you also used that percentage
6 to -- when you were calculating pre-trial lost income
7 and post-trial lawsuit income as well, right?

8 A That's only if, if individuals had received
9 benefits. Again, with -- there was, there were
10 situations where people were either un- either
11 unemployed or on unemployment where they had -- where
12 zero benefits were being calculated.

13 Q Okay. So other than when they were
14 unemployed or receiving unemployment benefits, you
15 utilized 44 -- 44.38 percent to calculate what you
16 determined to be lost benefit income and lost bene-
17 both pre-trial and post-trial, right?

18 A That's correct. Those, you know, those,
19 those often offset, but that is the number that I used.

20 Q And you -- okay. If we could go to -- and
21 you say that you utilized tables within Exhibit 2 in
22 order to determine that 44.38 percent; is that right?

23 A Yeah. I believe it's Table 5.

24 Q Table 5?

25 MR. SMITH: Okay. Well, let's go

Page 13

1 30.7 is, is how much it is as, as the total, as, as
2 the total hundred percent compensation, but it's
3 not -- it's -- as a, as a factor of the wages that are
4 actually paid it's at 44.38.

5 Q Why is -- doesn't this say total benefits
6 percentage 30.7?

7 A True, but it's total -- it's, it's, it's a,
8 it's a total benefits of the total compensation. It's
9 a percentage of the total compensation. We're
10 calculating it based on the wages. So as, as to what
11 wages are being paid, 22.50 over 50.70 is 44.38.

12 Q And you're using "Management, business, and
13 financial" for all of the plaintiffs?

14 A Yes.

15 Q Are you aware that several of the plaintiffs
16 were not in management?

17 A I, I think that's, I think that's probably
18 correct.

19 Q Are you aware that some of the plaintiffs are
20 actually sales, in sales?

21 A Yeah. I'm, I'm aware of that. I think that,
22 that the type of sales we're talking about is, is still
23 going to be in "Management, business, and financial"
24 classification.

25 Q Do you see that there's a classification here

Page 15

1 to Table 5.

2 Q Table 5 is entitled "Employer Costs for
3 Employee Compensation for private industry workers by
4 bargaining and work status"; is that correct?

5 A That's correct. And you need to go to the
6 next page of Table 5.

7 Q Okay. So we're looking at Table -- the
8 second page of Table 5. Can you show me on here where
9 44.38 percent shows up?

10 A You have to, you have to understand how
11 fractions work to get to 44.38. The, the amount -- and
12 I, I utilized "Management, business, and financial,"
13 that second line there, and you, you can see in this
14 table that they're expressing benefits as a percentage
15 of total compensation, but as a factor of the wages
16 it's going to be that 44.38.

17 Q Where -- how do you get 44.38? How did you
18 calculate that?

19 A You divide, you divide 30 -- 22.5 by 50.70,
20 the cost numbers.

21 Q Where is 20 -- okay. 22.5 the cost, and you
22 do, you -- what do you --

23 A Divide that by, you divide that by the
24 actual wages that are paid, the 50.70, and that's how
25 you get 44.38. Again, it's just fractions. The, the

Page 14

1 for "Sales and related"?

2 A Yeah. But you see that the sales and related
3 people are making 36 -- or, I'm sorry, getting paid \$27
4 an hour. That's not, that's not the kind of people
5 we're dealing with here.

6 MR. SMITH: Objection,
7 nonresponsive.

8 Q Mr. Ramin, you, you, you just testified that
9 you chose "Management, business, and financial" for all
10 of the plaintiffs, correct?

11 A That's correct.

12 Q And you utilized this table for that?

13 A Yes.

14 Q And yet this table has a section for
15 sales-related employees, but you chose not to use that
16 number, correct?

17 A Yes.

18 Q And that number shows a percentage that is
19 less than that for "Management, business, and
20 financial," right?

21 A Yes.

22 Q And is this first time that you've ever
23 utilized this type of percentage to calculate benefits
24 in any litigation or proceeding that you've provided an
25 opinion in?

Page 16

4 (Pages 13 to 16)

1 A No.

2 Q What other proceedings have you utilized this

3 benefits percentage calculation methodology in other

4 proceedings?

5 A Many times when I was -- when I'm working as

6 a consultant, not, and not in an expert position. And

7 I've done a number of lost, lost earnings due to

8 personal injur- injuries, lost earnings due to

9 allegations of medical malpractice. Those are some --

10 Q So as --

11 A -- that come to mind.

12 Q So as far as expert reports, have you -- is

13 this the first time that you are utilizing this

14 benefits percentage calculation methodology?

15 A No.

16 Q But it's the first time you're ever doing it

17 in an employment discrimination case, right?

18 A That's, that's my best recollection. The

19 methodology is, is the same, but it's, it's my, it's my

20 current recollection that I've not seen -- I've not

21 applied, applied it in, in that fact situation.

22 Q Okay. So I just want to make sure that the

23 jury's clear on this. This is the first time in which

24 you are providing expert testimony or an opinion in an

25 employment discrimination case where you are utilizing

Page 17

1 this benefits methodology calculation; is that right?

2 A That's my current recollection.

3 Q Okay. And what source are you relying on to

4 come up with that calculation rather than just using

5 the percentages that are on this table?

6 A I'm using I'd call it logic.

7 Q So it's just your own logic?

8 A No. I think it's, it's pretty -- it's, it's

9 obvious that if you're trying to, if you're trying to

10 look at benefits as a function of wages, you -- that,

11 that, that percentage, that 30 percent on there is not

12 a percentage -- it's not a percentage as of the wage.

13 It's a percentage of the total compensation. So it's

14 just, yeah, it's logic.

15 Q Can you point to any source that has used

16 that same calculation methodology that you're using to

17 determine benefits?

18 A I, I've seen, I've seen it written before.

19 Q Can you identify that?

20 A I've seen it in the supporting documentation

21 for calculations, the calculation software that I use

22 for this type of work.

23 Q What, what type of calculation software do

24 you use?

25 A It's called, it's called Damages Advocate.

Page 18

1 Q And is that the software you utilized to come

2 up with this benefits percentage analysis?

3 A Well, the soft- yeah. The -- I, I think

4 that's, that's accurate. It is, it is, it is in, in

5 that, and there's some of the, the user explanations of

6 how you get to that number is, is in, in that

7 documentation.

8 Q In utilizing this Damages Advocate software

9 do you manually put in the percentage of benefits that

10 you think is applicable, or does the software package

11 do that automatically?

12 A Well, it depends on the selections that I

13 make. I, I selected this, this category, and it, and

14 it, and it populates, populates it automatically, and I

15 checked it against this publication to make sure it,

16 make sure it was accurate.

17 Q Okay. My question, Mr. Rambin, is, in

18 inputting the data into the Damages Advocate software

19 program do you manually have to put in the percentage

20 of benefits that you believe is applicable in order to

21 make the calculation, or does the software package do

22 that automatically?

23 A Well, I think you're asking two different

24 questions. I had to make the selection, and once I

25 made the selection then it populates.

Page 19

1 Q So you had to put in the number of 44.38

2 percent for the software to calculate -- to populate;

3 is that right?

4 A No. I had to select this, this category,

5 this "Management, business, financial," and then it

6 populated the 44.38.

7 Q Are you saying that this -- that your

8 software package has this table, has the data within

9 this table in the software?

10 A Yeah. It's a, it's a web-based application

11 that, that keeps all these current statistics and

12 things like that.

13 Q So what, what information do you have to

14 input into the program for benefits in order for it to

15 populate?

16 A Like I said, that, that classification of

17 "Management, business, and financial."

18 Q And what else do you have to put in there?

19 A Well, as far as, as, as far, as far as

20 benefits that's it.

21 Q So would you agree that if you put in "Sales

22 and related," it would come up with a different number?

23 A Yes.

24 Q And if you put in "Information" employees, it

25 would come up with a different number?

Page 20

5 (Pages 17 to 20)

1 A Sure.

2 Q And given the choice between management and

3 sales, you put in the higher number, right?

4 A Sure. That's, that's, that's what happened.

5 That's not why I did it.

6 Q And when you were going through each

7 individual plaintiff you didn't individualize their

8 benefits category, did you? You used "Management,

9 business, and financial" for all of them?

10 A Yes.

11 Q So you didn't make any determination as to

12 whether someone was a software programmer versus

13 management?

14 A I did not.

15 Q You did not make any determination as to

16 whether someone was in sales rather than management,

17 business, and financial?

18 A I, I did not.

19 Q You did not determine whether someone was in

20 services rather than management, business and

21 financial; is that right?

22 A That's correct.

23 Q And again, other than this software program,

24 can you, can you point the jury to any research

25 publication that uses 44.38 percent as a basis for

Page 21

1 calculating benefits in an employment law case?

2 A Not as I'm sitting here.

3 Q And you didn't cite to any of those in your,

4 in your report, did you?

5 A No, I didn't.

6 Q Do you know what the costs, percentage costs

7 for IBM were?

8 A No. I don't have any independent information

9 on IBM's benefits cost.

10 Q Well, you don't have any information on it at

11 all, right? Isn't that correct, Mr. Rambin?

12 A I -- give me a second. I, I think I do have

13 some information. I haven't quantified it, but when

14 you see the W-2s from the -- some of the IBM employees,

15 the, the W-2s now disclose insur- the cost of health

16 insurance, things like that, but I've not, I've not

17 quantified it, but I have seen it.

18 Q Okay. So although you had some information

19 on the individual benefits that these plaintiffs had,

20 you didn't quantify that information; is that correct?

21 A Well, I had -- the, the important part of it

22 is it was some of the information and so that the some

23 information that I had I did not quantify.

24 Q You did not do any individualized analysis on

25 what benefits these plaintiffs had at IBM, correct?

Page 22

1 A That's correct.

2 MR. PRINGLE: Objection, form.

3 Q (By Mr. Smith) And you don't know what the

4 percentage of IBM -- the percentage costs of IBM

5 benefits were for any of these plaintiffs, correct,

6 these plaintiffs?

7 A Their individual costs I do not have that

8 information.

9 Q And did you do -- do you have information on

10 what benefits any of these plaintiffs received after

11 they left IBM?

12 A Could you clarify that question?

13 Q Sure. Do you have -- did you have any

14 information about the benefits that any of these

15 plaintiffs received through their employment after they

16 left IBM when you were preparing this report?

17 A Yes. When, when I, when I interviewed

18 these -- the folks that had subsequent employment and

19 had, had benefits I made inquiries as to what, what

20 type of benefits they had, and, and, you know, I, I

21 assumed they were comparable to IBM just to be

22 conservative about that.

23 Q And did you do any individualized assessment

24 of the benefits that any of the plaintiffs received

25 after they left IBM as a part of your expert report?

Page 23

1 A Not, not in a quantifiable matter -- manner.

2 As I've said, to be conservative I assumed that the

3 cost would be the same, so it would be a wash between

4 the two positions.

5 Q You said that you interviewed the plaintiffs.

6 Did you interview all of the plaintiffs?

7 A Yes, sir.

8 Q When did you do that?

9 A Prior to the completion of my report. It

10 would have been sometime in, I'm assuming, beginning in

11 early February.

12 Q How did you interview them?

13 A Telephone.

14 Q Did you record any of these conversations?

15 A No.

16 Q Other than you and the plaintiffs, was anyone

17 else involved in these telephone conversations?

18 A No.

19 Q No attorneys were involved?

20 A No.

21 Q Did you take notes of these interviews?

22 A I may have. I, I don't -- I'm not sure about

23 that.

24 Q You're not sure if you took any notes

25 regarding your interviews with these plaintiffs?

Page 24

6 (Pages 21 to 24)

1 A I just, I don't, I don't recall if I did or
2 didn't. I was, I was mostly working with, with
3 the -- on the, on the computer working, working on
4 their, on their, their aspect of the report.
5 Q Well, did you -- while you were talking with
6 them were you taking notes on your computer?
7 MR. PRINGLE: Objection, form.
8 A I don't, I don't recall. It wouldn't have
9 been like that. I would have been actually working on
10 the, on the, the act- the draft of the report and
11 verifying -- you know, I was doing things like
12 verifying their date of birth, verifying how -- their
13 ethnicity, dis- discussing with them their, their
14 intentions for retirement, to the extent they had
15 subsequent employment did they have benefits, those
16 sort of things. And so I was working, working on the
17 report itself.
18 Q (By Mr. Smith) In your report, and we'll go
19 through this in more detail later, but on some of the
20 plaintiffs you state that they have an intended
21 retirement date of 70 years old; is that correct?
22 A That's correct.
23 Q Is that based on your interviews of them?
24 A That's correct.
25 Q And then on other plaintiffs you don't --

Page 25

1 you, you utilize an actuarial number for their intended
2 retirement date; is that right?
3 A That's correct.
4 Q So it's fair to say when you use the
5 actuarial number that those plaintiffs did not provide
6 you with any information on their anticipated
7 retirement date?
8 A No. Just the, the opposite. I, I spoke with
9 each of them about that, and there was some of them
10 that said, No, I'd be, I'd be ready to retire, you
11 know, at a normal time, I wouldn't have any plans to
12 work past an expe- a future life.
13 Q And what's a normal time?
14 A Well, the, the calculated worklife
15 expectancy. I would tell them, you know, The, the
16 calculation says that you would be retired by X date.
17 Does that sound right? Or, you know, and some would
18 say, No, I, I would have worked, I would have worked
19 till at least age 70.
20 Q Okay. So that, that's my question. So with
21 regard to the plaintiffs who had the actuarial number,
22 they would have told you that their anticipated date of
23 retirement would not have been past that number; is
24 that right?
25 A That's correct.

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1 Q And the others they just said they were
2 planning to work until 70 years old?
3 A Yes.
4 Q And again, I want to make sure we're clear.
5 Do you or do you not have any notes regarding your
6 interviews with any of these plaintiffs?
7 A I don't think so.
8 Q Did you go back to review your papers and
9 notes to see what you had before you had this
10 deposition?
11 A I, I looked at some, some documents that I'd
12 printed out, some documents that were in production,
13 but I don't recall looking at any notes.
14 Q What were the documents that you printed out
15 that you reviewed in preparation for this deposition?
16 A Well, it'd be the exhibit we just talked
17 about with the, the employee benefit; that document is
18 one. You know, some, some W-2s, some of the tax
19 returns just to refresh my memory on, on things.
20 Q Okay. I'm sorry. You looked at reports and
21 what other documents?
22 MR. PRINGLE: Objection, form.
23 A Well, as, as an example, I, I would have -- I
24 had some of these W-2s that I'd used -- I'd, I had, I
25 had printed them out -- some of the tax returns,

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1 different, different documents like that. And, you
2 know, I looked at them both on paper and on, on a, on a
3 computer.
4 Q (By Mr. Smith) And after reviewing the
5 documents, W-2s, etc., in preparation for this
6 deposition, you didn't, you didn't submit a revised
7 report, did you?
8 A No. I have not.
9 Q You did not make any changes to your original
10 report even after re-reviewing the documents?
11 A Yeah. I've not been requested to, to do
12 that.
13 Q And after reviewing the documents you didn't
14 feel any need to submit a revised report?
15 A Well, I think, I think that if I was asked
16 to, I would. I mean, I know there was, there was one,
17 one document that, that Dr. Steward alerted me to that,
18 that had been inadvertently overlooked.
19 Q What's that document?
20 A Oh, it's on Mr. Townsley's, some of his -- he
21 had a contract job, I believe in 2018, that he had, he
22 had omitted from his tax return, and I didn't, I didn't
23 pick up on that until, until I read Dr. Steward's
24 report.
25 Q Am I understanding you correctly that

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7 (Pages 25 to 28)

1 **Mr. Townsley omitted income from his tax return?**
2 A Yeah. He, he did. He, he, he did, and then
3 the IRS figured it out and he, he, he paid the tax.
4 And, you know, it actually wasn't that much of a
5 difference, because there'd already been withholding
6 taken from, from the employment that he had with that
7 contract job. But so I just, I didn't pick up on, on
8 that in preparing, in preparing my report.
9 Q What was the income that he omitted? What
10 was the income that Mr. Townsley omitted from his tax
11 returns?
12 A It was, it was a contract job. People were
13 referring his -- it was a contractor for ARM, and I
14 think the amount, the W-2 amount was, like, \$58,000.
15 Q So Mr. Townsley omitted \$58,000 in income
16 from his IRS return?
17 MR. PRINGLE: Objection, form.
18 A Well, he, he, he did not include it on his
19 tax return, and, and then it got rectified.
20 Q (By Mr. Smith) Other than Mr. Townsley --
21 well, let me ask you, did you review all of Mister --
22 of Dr. Steward's expert reports in this lawsuit?
23 A Like I said, I read through them.
24 Q After reading through them, other than
25 Mr. Townsley was there anything else that you felt

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1 needed to be changed from your expert report?
2 A Not that I recall.
3 Q Nothing with regard to Titon Hoque? Is that
4 right, Mr. Rambin?
5 A I'm -- I don't know that, that anything I
6 would do differently on, on that, you know, based on
7 the information that was available at the time. It
8 does -- his, his income seems to have gone up. His
9 deposition was taken after, after my report, but seems
10 like there's also some uncertainty about whether he's
11 going to keep that ACC job. I don't know how that's
12 going.
13 You know, all of these -- all of this is
14 a moving target. These people are living their lives
15 and either doing something to, to earn, earn a living,
16 and so these, these numbers are going to keep -- you
17 know, they change every day.
18 Q There's nothing you felt you needed to change
19 in your report about Walter Noffsinger; is that right?
20 A Not that I'm aware of.
21 Q Do you know what the current average
22 retirement age is at IBM?
23 A No.
24 Q Do you know what the current average age of
25 retirement is in the technology industry?

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1 A I haven't, I haven't looked at it that way.
2 I, I -- so no, I do not.
3 Q So you didn't calculate average age of
4 retirement based on the industry that they were in,
5 these plaintiffs were in?
6 A That's correct.
7 Q Would you agree that they were all in the
8 technology industry?
9 A In one form or another.
10 MR. SMITH: If we could go to Tab 5
11 in the universal packet, Richard. It should say
12 "Average Retirement Age - an Update." If I could have
13 this marked as Exhibit No. 3.
14 (Exhibit No. 3 marked off the
15 record.)
16 Q Mr. Rambin, in, in conducting your research
17 to prepare this expert report did you review this
18 publication, "The Average Retirement Age - an Update,"
19 dated March 2015?
20 A I don't believe so.
21 Q And this is from the Center for Retirement
22 Research at Boston College; is that right?
23 A That's what it says.
24 Q Would you agree that the retirement -- the
25 Center for Retirement Research at Boston College is a

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1 reputable institution?
2 A I'm not familiar with it.
3 Q Are you familiar with Boston College
4 University?
5 A I've heard of it.
6 Q Would you agree that that's a reputable
7 university?
8 A I don't have any basis for that either way.
9 Q You don't have any basis to deter- to opine
10 one way or the other whether Boston College is a
11 reputable university?
12 A I've heard of it before, but I don't know, I
13 don't know what else to say.
14 Q Okay.
15 MR. SMITH: Let's go to, should be
16 page 3 of this document.
17 Q If we look at the bottom right-hand corner,
18 do you see where it says "Average Retirement Age"? It
19 says, "The data on labor force participation can be
20 used to construct an average retirement age, defined as
21 the age at which the labor force participation rate
22 drops below 50 percent." Did I read that correctly?
23 A I see that.
24 Q It goes on to say, "Based on this definition,
25 in 2013 the average retirement age was about 64 for men

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8 (Pages 29 to 32)

1 and about 62 for women." Did I read that correctly?
 2 A I see that.
 3 Q Were you aware of this research at the time
 4 that you made your expert report?
 5 A Not that particular research.
 6 Q So in, in conducting your research on the
 7 retirement age for these plaintiffs you, you never came
 8 across this publication?
 9 A That's correct.
 10 Q You never came across this research?
 11 A Correct.
 12 Q You never came across the information that
 13 the average age of retirement for men was 64 and women
 14 was 62?
 15 MR. PRINGLE: Objection, form.
 16 A Yeah. I, I don't know. I don't know that.
 17 I haven't read it. I haven't read the report.
 18 Q (By Mr. Smith) Okay. Do you have any reason
 19 to dispute this data?
 20 A I just don't -- I don't have any, I don't
 21 have any opinion either way on this report.
 22 MR. SMITH: Objection,
 23 nonresponsive.
 24 Q Do you have any reason to dispute this data
 25 in Exhibit No. 3?

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1 A Since I haven't read it, I, I would have to
 2 say I don't have any basis either way.
 3 Q Okay. And you certainly didn't take this
 4 information into account in preparing your expert
 5 report, right?
 6 A Two things: Yes, I didn't, but I, I think
 7 you're misunderstanding this, this -- the intention of,
 8 of these individuals. I'm not, I'm not making that
 9 determination. They're going to have to demonstrate
 10 it. I'm just using that assumption.
 11 Q What do you mean they are going to have to
 12 demonstrate?
 13 A They, they will, they will need to be able to
 14 explain to the, to the finder of facts their
 15 intentions. I'm just using what they told me.
 16 Q And some of the plaintiffs told you that they
 17 intended to work until they were 70; is that right?
 18 A Correct.
 19 Q And some of them told you they didn't know
 20 how long they were going to work; is that right?
 21 A Well, I don't think they said it that way. I
 22 would -- I told them what the life expectancy- or the
 23 worklife expectancy that I see in calculations, and
 24 they, they didn't object to that being a, a retirement
 25 time.

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1 Q So you suggested the, the retirement age to
 2 the plaintiffs --
 3 A I told them --
 4 Q -- is that right?
 5 A Well, I, I told them what was calc- what was
 6 calculated on the, on the data that I was using.
 7 Q Okay. So you told them the date that was
 8 showing up on your software program and asked them if
 9 that was the date that they intended to work until?
 10 A That's, that's, that's kind of maybe
 11 mischaracterizing it a little bit, but the point was
 12 they didn't, they didn't disagree with that as, as a
 13 time to retire.
 14 Q Okay. So I just want to make sure the jury's
 15 clear. You stated an age that the software program
 16 stated would be their average age of retirement, and
 17 you asked them if that was accurate in their mind; is
 18 that correct?
 19 A That's a fair way to say it.
 20 Q So you were giving them the, the age, and
 21 then they either agreed with it or didn't agree with
 22 it; is that right?
 23 A That's correct.
 24 Q Do you have any scientific basis for using
 25 somebody's stated age of retirement as a basis for

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1 calculating lost wages in a discrimination lawsuit?
 2 MR. PRINGLE: Objection --
 3 A No.
 4 MR. PRINGLE: -- form.
 5 Q (By Mr. Smith) I'm sorry?
 6 A I said no.
 7 Q Can you point to any research publication
 8 that states that utilizing a plaintiff's estimated date
 9 of retirement is proper in assessing lost wages in a,
 10 in an employment discrimination case?
 11 A No.
 12 Q Did you just come up with that yourself?
 13 A No.
 14 Q Where did you come up with it from?
 15 A I've, I've seen it. I've seen it done in
 16 other, in other matters. And again, I --
 17 Q In employment discrimination matters? Have
 18 you seen it --
 19 A No.
 20 Q -- done in any employment discrimination
 21 matters?
 22 A No. Again, I, I believe you're
 23 mischaracterizing what I'm doing. I'm just --
 24 MR. SMITH: Objection to the
 25 sidebar, nonresponsive.

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9 (Pages 33 to 36)

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1 MR. PRINGLE: You need to let him
2 finish his answer, then you can object.

3 MR. SMITH: Yes, sir.

4 Q Are you done with your answer?

5 A Yes.

6 Q Thank you. Mr. Ramin, in preparing your
7 report you, you don't provide any opinion as to how
8 long it should have taken any of these plaintiffs to
9 find work, correct?

10 A That's correct.

11 Q And in your expert report you don't
12 find -- you, you don't incorporate any opinion as to
13 how long it should have taken any of these plaintiffs
14 to find comparable employment, correct?

15 A That's correct.

16 Q You don't provide any opinion in your expert
17 report as to whether any of these plaintiffs' job
18 searches were reasonable, correct?

19 A Correct.

20 Q You don't analyze any of that with regard to
21 your expert report?

22 A That is correct.

23 Q In your expert report you didn't take into
24 account what the job market in Austin, Texas was during
25 the time that these plaintiffs were conducting their

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1 job searches?

2 A I did not.

3 Q In fact, you didn't take into account what
4 the job market was like in the entire United States at
5 the time that -- well, following the time that any of
6 these plaintiff was separated from IBM, right?

7 A That's correct.

8 Q So you didn't take into account or analyze
9 how long it would take someone in their positions in
10 the Austin job market to find a comparable position?

11 A Correct.

12 Q So in other words, you just, you just did an
13 accounting analysis; isn't that right?

14 MR. PRINGLE: Objection, form.

15 A I, I only analyzed what actually happened. I
16 didn't try to create something.

17 Q (By Mr. Smith) You, you took data from what
18 they were earning, what these plaintiffs were earning
19 at IBM and what income they earned after they left IBM,
20 and you made an accounting determination, correct?

21 A You know, I, I don't know what you mean by
22 accounting, but I did, I, I did my analysis based on
23 what they reported and then applied other, other
24 factors to it. So it's not really an accounting. I
25 wouldn't refer to it as an accounting analysis, but I

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1 did -- I didn't create any, any, any of those things
2 that you've been asking about as far as the
3 reasonableness of their job search or whatever else.

4 Q Okay. Well, you, you didn't determine -- you
5 testified earlier you didn't determine what their
6 actual benefits were at any of their subsequent
7 employment positions after leaving IBM, right?

8 A Oh, I think I, I described that as trying to
9 be conservative and assumed that they were -- if they
10 had benefits that they were equivalent to the IBM. So
11 that wouldn't be a factor.

12 Q Okay. So you just determined whether they
13 had benefits or didn't have benefits, right?

14 A That's correct.

15 Q You didn't determine what type of benefits
16 they had?

17 A Well, anecdotally I did when I was talking to
18 these folks. Like, I, I can recall talking to, to the
19 folks that had it, and they would say, yeah, you know,
20 they were, they were comparable or maybe not as good as
21 IBM. But they, they did talk -- they did say, you
22 know, things like vacation and, and sick leave and
23 whatever else is, is in it, is in that full package.

24 Q Okay. So setting aside the percentage, your,
25 your determination was, based on your interviews with

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1 them, that if they had benefits at any of these other
2 positions that those benefits were comparable to the
3 benefits that the plaintiffs had at IBM; is that right?

4 A That's correct.

5 Q Okay. And so then other than determining
6 whether or not they had benefits, you also looked at
7 what their income was after they left IBM, correct?

8 A That's correct.

9 Q So other than their income and whether or not
10 they had benefits, what other factors did you take into
11 account in preparing your report?

12 A Well, what, what was cited in the report is
13 things like the, the historical inflation rates in the,
14 in the, in the pre-trial parts and then discounting the
15 future post-trial. Also using inflation to project
16 salary increases both at the IBM position and future
17 positions.

18 Q Okay. But --

19 A Those are some that come to mind as I'm
20 sitting here.

21 Q Okay. But those, those are, those are just
22 discount percentages, correct, or interest percentages?

23 A Well, the, the expected future salary
24 increases at, at both, at both IBM and their subsequent
25 employment is, is, you know, it is, it is an interest,

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10 (Pages 37 to 40)

1 Q Okay. So you made an assessment that you
2 felt that he was a manager for purposes of your
3 analysis, right?

4 A I certainly -- I think that's an accurate
5 description, and again, I can't foreclose the
6 possibility that I saw that on a -- on some of his, his
7 personnel documents.

8 Q Okay. Can you point us to any of those
9 personnel documents that show he's a manager in your
10 view?

11 A Not as I'm sitting here.

12 Q Okay. You show his initial salary as
13 \$350,000; is that right?

14 A That's correct.

15 Q And that's a round number, correct?

16 A Yes, it is.

17 Q Where did you get that number from?

18 A It's an average of his, his employment over,
19 I think, I think it was, the preceding four years,
20 something along those lines.

21 Q Where, where did you, where did you get
22 information as to four years of employment for
23 Mr. Townsley?

24 A From the documents that were produced in
25 this, in this lawsuit.

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1 A It would have been his, his, his tax returns
2 for 2014, 2015 and, and this document we're looking at
3 here.

4 Q Okay. So I want to make sure that we're
5 clear, that your testimony is clear. Your testimony is
6 that when you took into account his last five years of
7 employment compensation at IBM it averaged out to
8 \$350,000?

9 A Yes. Slightly over that, but I rounded down
10 to 350.

11 Q Because if we look at this document, if we
12 can just do the math real quick, 167 -- he made
13 \$167,228.88 in 2016, correct?

14 A I can't read that.

15 Q Did I read that correctly, 167,228.82 in
16 2016?

17 A No. You're reading that incorrectly.

18 Q \$167,228.88.

19 A The, the numbers that, that are -- that
20 represent his compensation would be the first two line
21 items.

22 Q Okay. Fair enough. Let's do that. So if we
23 add 138,264 plus 44,693, that equals \$182,957, right?

24 A That's correct.

25 Q Okay. And then if we go to the next line and

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1 MR. SMITH: Let me -- let's go to
2 Exhibit No. 5, and this is going to be to -- I'm sorry.
3 This is going to be in the Townsley report for
4 Dr. Steward, Richard. It's going be Exhibit 5 to the
5 Townsley portion of Dr. Steward's report. Perfect.
6 And let's have this marked as the next exhibit. Is
7 that Exhibit 4 or 5?

8 THE REPORTER: I have 4.

9 MR. SMITH: 4. Okay. Thank you.
10 (Exhibit No. 4 marked off the
11 record.)

12 Q So have you ever seen this document before,
13 Mr. Rambin?

14 A Yes.

15 Q Is this the document that you utilized to
16 determine his salary, Mr. Townsley's salary?

17 A It certainly was part of it.

18 Q And this goes back four years, right, to
19 2016?

20 A Yeah. But it was -- I used the, the four
21 years preceding his termination in addition to his
22 termination year. So I guess it was actually five
23 years that I, that I utilized.

24 Q What is the document that you utilized to, to
25 get that?

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1 we add 138,271.56 plus 156,628.71, that equals
2 \$294,900.27, right?

3 A Correct.

4 Q And then if we go down to 2018, \$67,983 plus
5 68,400 -- well, let me try to get it exactly.
6 67,983.52 plus 68,455.51 equals \$136,493, right?

7 A Yes, it does.

8 Q Okay.

9 A You know, you, you should note that that's
10 only for work through June 15th --

11 Q Okay.

12 A -- of that year. So it's --

13 Q We don't really know what -- unless we
14 prorate that, so but if we go back for his first two
15 years, the two last full years, it would have been
16 294,900.27 plus 182,957 divided by 2 would give us an
17 average of \$283,928.64; is that right?

18 A I'll trust your math.

19 Q Okay. Significantly less than the \$350,000
20 that you cite in your report.

21 A That's correct.

22 Q But your testimony is, if we were to look at
23 the previous two years beyond that?

24 A Yes.

25 Q So if we go back to 2014 --

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14 (Pages 53 to 56)

1 A Yeah. Go back to 2014, 2015.
2 Q And your testimony --
3 A And, and --
4 Q -- is if we, if we look at those years and we
5 do an average, it's going to come out to \$350,000?
6 A Correct. If, and if, if you annualize -- I
7 annualized that 2018 salary and commissions as well.
8 Q How did you annualize? Did you just double
9 it?
10 A No. Well, I div- I divided it by 11 and, and
11 multiplied it by 24.
12 Q Divided it by 11 -- and say that again?
13 A Divided it, divided those amounts by 11, that
14 would be the -- in two-week periods, because he, he was
15 terminated as of I believe right around June 15th, and
16 then multiply that by 24 would get you an annualized
17 number.
18 Q Okay. Well, let's see what that comes out
19 to. So we take the 136,439.03, you said multiply by
20 11?
21 A Divide it by 11.
22 Q Divide it by 11.
23 A And then multiply it by 24.
24 Q That gives you 297,685.
25 A Correct.

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1 Q Okay. So for the three years that we
2 actually have documentation on here, he never made even
3 \$300,000.
4 A For those three years that's correct.
5 Q So again, your testimony is that those
6 additional, those additional two years, which would be
7 2015 and 2014, when you include those it's going to
8 average out to \$350,000?
9 A Correct.
10 Q Okay. And would you agree that
11 Mr. Townsley's compensation fluctuated over the years,
12 correct?
13 A Yes, it did.
14 Q Because he had a set salary plus commissions,
15 right?
16 A Correct.
17 Q And again, wouldn't commissions indicate that
18 he had a sales role?
19 A Certainly does.
20 Q As opposed to a manager role?
21 MR. PRINGLE: Objection, form.
22 Q (By Mr. Smith) Isn't that right?
23 A Well, again, I think that's a -- sales, sales
24 is a pretty broad term. He's, he's not out hitting the
25 streets selling stuff.

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1 MR. SMITH: And let's, let's go
2 back to Exhibit 1, back to Mr. Townsley's portion, and
3 if we could go to page -- go three -- two pages
4 further. If we could highlight the "Pre-Trial Lost
5 Income and "Post-Trial Lost Income," the bottom half
6 there.
7 Q So Mr. Rambin, despite your testimony just
8 now that Mr. Townsley's income fluctuated up and down
9 throughout the years, you used \$350,000 as the amount
10 all the way through 2028 in your calculations with
11 regard to Mr. Townsley; is that right?
12 A That's correct.
13 Q Would you agree with me that Mr. Townsley,
14 even when he was at IBM his bonuses or his commissions
15 fluctuated pretty significantly?
16 A Yes.
17 Q So why did you use a set number when you knew
18 that his salary, his compensation fluctuated
19 significantly over the years at IBM?
20 A It's simply using an average, and some, some
21 years it would have been higher, some years it would
22 have been lower, likely, based on his prior experience.
23 Q Are you aware that Mr. Townsley's starting
24 base salary at Oracle is actually higher than his base
25 salary at IBM?

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1 A Yes. I included that in the calculation.
2 MR. SMITH: And if we could go to
3 Tab 8 of Mister -- of Dr. Steward's report with regard
4 to Mr. Townsley.
5 (Exhibit No. 5 marked off the
6 record)
7 MR. PRINGLE: I'm sorry. You are
8 which one, are you in the general?
9 MR. SMITH: No. Sorry. This would
10 be -- I know we're going back and forth. So this is
11 Doctor -- this is with the plaintiff specific, so this
12 will be for Townsley Tab 8.
13 MR. PRINGLE: Okay.
14 MR. SMITH: We may need to blow
15 that up a little bit.
16 Q Mr. Rambin, is this the 50,328 in income that
17 Mr. Townsley had in 2018 that you were referencing
18 previously that was not included in your report?
19 A Yes, sir.
20 Q And again, you haven't revised your report
21 since learning of this, right?
22 A I have not.
23 MR. PRINGLE: Object to form.
24 Q (By Mr. Smith) And, and that would decrease
25 the amount of damages that you're claiming that

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15 (Pages 57 to 60)

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1 **Mr. Townsley would be entitled to, correct?**

2 A Yes, it would. Yeah. Just to clarify, that

3 is my opinion that that should be deducted from the

4 calculation. I have not been requested to revise my

5 report, but that would be my opinion.

6 Q Okay. And even though you weren't asked to

7 revise it, you didn't feel the need to before this

8 deposition?

9 A No.

10 Q Are you aware that Mr. Townsley received an

11 increase in his base salary in 2021 to \$157,000?

12 A I don't, I don't have it off the top of my

13 head. If it's in the calculation -- if I had the

14 document, it would be in the calculation.

15 Q Did you include that in the calculations?

16 A Well, if I could, if I could look at the

17 report, I could tell you. I, I don't know that

18 extemporaneously.

19 MR. SMITH: Let's go next to the

20 section of Exhibit 1 that deals with Titon Hoque. And

21 if we could go to the next page. And actually, I'm

22 sorry, if we could, if we could -- oh, wait. So, I'm

23 sorry. What we need to do, Richard, is go to Exhibit

24 No. 1 and the section in Exhibit No. 1 that deals with

25 Titon Hoque. It should be about midway through.

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1 THE REPORTER: It's page 33 of the

2 expert report.

3 VIDEOGRAPHER: Can ya'll see it?

4 Q Can you see it, Mr. Rambin?

5 A Yes.

6 Q Is this the portion of your expert report

7 that you submitted in this lawsuit with regard to

8 plaintiff Titon Hoque?

9 A Yes, sir.

10 Q And in this case at the time of Mr. Hoque's

11 termination he was 44.48 years old; is that right?

12 A That's correct.

13 Q And you have a projected retirement age of 70

14 years old; is that right?

15 A Yes. That's what he represented to me.

16 Q And you based that projected retirement age

17 based on what he told you?

18 A Correct.

19 Q Did you rely on anything else other than what

20 he told you as far as determining his retirement age?

21 A No. Well, I guess the fact that he's -- that

22 he was -- he's projected to still be alive at 70.

23 That's, that's a factor, but that's it.

24 Q And what do you mean by that?

25 A Well, you know, it's, it's -- he's, he's not

Page 62

1 working past his, his life expectancy. You know,

2 there's a difference between worklife expectancy and

3 life expectancy. That's all.

4 MR. SMITH: If we could go to the

5 next page, and if we could look at the top first.

6 Q Do you see his occupation listed as technical

7 services professional?

8 A Yes.

9 Q And did you consider that to be a manager?

10 A I don't, I don't know specifically.

11 Q But you utilized the manager benefits

12 percentage that you calculated for him as well,

13 correct?

14 A That's correct.

15 Q If we could go down to the second half of the

16 page, "Pre-Trial Lost Income" and "Post-Trial Lost

17 Income," Mr. Rambin, are you familiar with the term

18 "back pay" and "front pay" as far as damages in

19 employment discrimination cases?

20 A I've heard the term before.

21 Q What's your understanding of back pay?

22 A Well, be for time that's, that's actually,

23 it's actually past. You're, you're being, you know,

24 restored to what you would have earned at, at that

25 point. That's, that's my understanding of it.

Page 63

1 Q And what's your understanding of what front

2 pay means in employment discrimination cases?

3 A I believe that would be what you, what you'd

4 be expecting had you been there, that, you know, you

5 wouldn't have -- it wouldn't have been earned yet, but

6 you would expect to, to get it.

7 Q So would you agree with me that what you

8 refer to as pre-trial lost income would be back pay?

9 A I think it's equivalent. I, I, I can't say

10 I've studied it, studied that, but that's my general

11 understanding.

12 Q And post-trial lost income would be front

13 pay?

14 A That's my understanding.

15 Q Okay. And in determining back pay you need

16 to also determine what income that particular

17 individual has had during that time period, correct?

18 A That's correct.

19 Q And that would be vital to your calculation?

20 A It's an important component.

21 Q Do you see in Section 2 there in the

22 "Post-Trial Lost Income"? Let's focus on -- or in the

23 "Pre-Trial Lost Income"? Let's focus on that first.

24 Do you see you show no income for Mr. Hoque from

25 January 2019 to December 2019?

Page 64

16 (Pages 61 to 64)

1 A Yes. I see that.
2 Q Were you not aware that Mr. Hoque had income
3 during that time period?
4 A I, I was not.
5 Q Did you review Mr. Hoque's deposition at the
6 time that you took this -- that you made this report?
7 A No. I did not. I did not have the
8 (crosstalk) --
9 Q Did you interview Mr. Hoque?
10 A I did talk to him.
11 Q Did you ask him about what income he may have
12 had in 2019?
13 A I don't specifically recall that. What I,
14 what I recall is he had, all he had was the 2020 tax
15 return and the unemployment benefit.
16 Q So you're not aware that beginning, beginning
17 in December 2018 Mr. Hoque was actually doing contract
18 work where he received \$90 per hour?
19 A No. I was not aware that that was happening
20 in, in that timeframe.
21 Q And were you not aware that he continued in
22 that contract position until February of 2020? I'm
23 sorry. Until, until February of 2021?
24 A I, I was aware of that. I think it was when
25 he was doing business as H&H or something along those

Page 65

1 lines. And that's that 155,3184 from his personal tax
2 return.
3 Q But you don't show anything for 2019.
4 A I did not have any information on that.
5 Q If in fact, if in fact Mr. Hoque was working
6 in that \$90-per-hour position in 2019 for that entire
7 year, wouldn't that change your numbers?
8 A Yes, it would.
9 Q It would decrease the amount of front -- or
10 back pay that you claim he may be entitled to, correct?
11 A That's correct.
12 Q And isn't it true that -- well, let's look
13 at -- you, you have him listed as making an income,
14 income of \$154,324 in 2021; is that right?
15 A That's what I see there.
16 Q What is that based on?
17 A I'd have to dig into the, into the documents
18 to, to do that. Again, extemporaneously I don't know.
19 I know, I know that he had a -- I believe he had a tax
20 return in, in 2020 that was, was what was utilized. He
21 was operating that H&H. I think it's a, it's like a
22 sole proprietorship.
23 Q Well, backing up a little bit, would you
24 agree with me if he was making \$90 per hour and worked
25 40 hours per week 50 weeks out of the year, that would

Page 66

1 equal \$187,200?
2 A I'll, I'll have to trust your math, but if
3 your math is correct, that, that would make sense.
4 Q And \$187,200 would be more than the 158,952
5 you show for his income at IBM, correct?
6 A That, that's, that is more.
7 MR. SMITH: Could we go to -- this
8 is going to be Exhibit 5 to Titon Hoque's section of
9 Dr. Steward's report.
10 (Exhibit No. 6 marked off the
11 record.)
12 Q Have you ever seen this document before,
13 Mr. Ramin?
14 A I don't believe so.
15 Q Do you see that it's an offer letter from
16 Austin Community College dated January 25th, 2021?
17 A Yes. I see it.
18 Q And do you see what the annual rate of his
19 salary's going to be?
20 MR. SMITH: Sorry. We need to go
21 down a little further.
22 A Yeah. It's hard for me to read that small.
23 Q Do you see that's \$170,000?
24 A Yes, I do.
25 Q That's different than the 155,324 that you

Page 67

1 put in -- 154,324 that you put in your report, isn't
2 it?
3 A Of course. That's because he didn't start
4 until February 1st apparently.
5 Q And did, did Mr. Hoque tell you that he
6 actually got a raise to \$178,000?
7 A I saw that in his deposition testimony.
8 Q Did you include that in your report?
9 A That -- I did not.
10 Q And that change would also lower your
11 estimation for back wages; isn't that right?
12 A Yes.
13 Q And \$170,000 is more than the 158,952 that he
14 was making at IBM; isn't that right?
15 A Yes.
16 Q So if -- and the 183,000 that we just talked
17 about is higher than he was making at IBM, right?
18 A That's true.
19 Q So if Mr. Hoque had income of higher than he
20 had at IBM beginning in 2018 going forward and his
21 benefits are the same, what damages does he have?
22 A Well, there, there's --
23 Q Economically speaking.
24 A There is a, there's a premise that's, that's
25 not correct in your, in your question. His benefits

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17 (Pages 65 to 68)

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1 period.

2 Q And if his benefits during the time that he's

3 employed at ACC are comparable to those at IBM, as

4 you've testified previously, then he would have no

5 damages with regard to his benefits either, correct?

6 A For that period.

7 Q And when you go to front pay, you're just

8 making an assumption that he will no longer be employed

9 at Austin Community College during that time, correct?

10 A I don't understand your question.

11 Q Isn't it possible that Mr. Hoque could be

12 employed at ACC for the next 20 years?

13 A Certainly.

14 Q And if he did, then there would be no damages

15 at all for him going forward; isn't that right?

16 MR. PRINGLE: Objection to form.

17 Q (By Mr. Smith) And let me make sure I'm

18 clear on that. There would be no economic damages for

19 him going forward if he stayed at ACC under these

20 similar circumstances, correct?

21 MR. PRINGLE: Objection, form.

22 Q That see- that seems correct to me. If, if

23 that's -- if, if indeed his, his salary and benefits

24 outpaced where, where he would have been at IBM, it

25 would, it would, it would certainly -- you wouldn't add

Page 73

1 additional damages.

2 Q (By Mr. Smith) Okay. And you didn't have

3 that information, apparently, when you created this

4 report, correct?

5 A That is correct.

6 MR. SMITH: Let's go to Michael

7 Sauro. So if we can go to Mr. Sauro's portion in

8 Mr. Ramin's report.

9 Q Mr. Ramin, is this the portion of your

10 report involving Michael Sauro?

11 A Yes, sir.

12 Q And the information at, at the time that

13 Mr. Sauro was separated from IBM he was 63.64 years

14 old, correct?

15 A Correct.

16 Q So he was less than six months, five months

17 shy of being 64 years old?

18 A That's correct.

19 Q And if we go to the second page, you list

20 Mr. Sauro as a director. Where did you get that

21 information?

22 A I, I believe it came from one of the, one of

23 the IBM documents, and it may be -- it may have been

24 shortened just because I didn't want a bunch of words.

25 Q You're saying it just came from some IBM

Page 74

1 document?

2 A That's my, that's my best recollection.

3 Q And if we could go down -- if we can -- if

4 you can see, the only income that you show Mr. Sauro

5 making from the time he was separated in June of 2018

6 is \$5,850; is that right?

7 A Doing math in my head I believe that's

8 correct. The, the income from Sedera [SED-ruh], or

9 seh-DARE-uh, however that's said.

10 Q So during the three-plus years that you

11 looked at, Mr. Sauro only had \$5,850 in income that

12 you're showing on here, correct?

13 A Yes. That's all I was aware of.

14 Q Are you aware that Mr. Sauro was also getting

15 distributions during that time from IBM's pension fund?

16 A Yes. I was aware of that.

17 Q Wouldn't that be income that should have been

18 included in this calculation?

19 A No. That's, that's --

20 Q Why not?

21 A That's a collateral source type thing. He

22 would have been entitled to it regardless.

23 Q Well, you included unemployment benefits that

24 other plaintiffs received, right?

25 A Yes.

Page 75

1 Q Then why wouldn't you, why wouldn't you

2 include retirement benefits?

3 A Again, those are -- those were event --

4 that's wholly unrelated to their claims, whereas the

5 employment benefits are related to the claims.

6 Q Why -- okay. Why would unemployment benefits

7 received by a plaintiff be included in your, in your

8 assessment but not retirement benefits received?

9 A Because the retirement benefits are unrelated

10 to his separation from IBM, and the unemployment

11 benefits are actually triggered by that. So I felt

12 like it was appropriate to treat that as an offset.

13 Q Is it your understanding that an employee at

14 IBM can receive benefit from the pension plan while

15 still being employed at IBM?

16 A I, I don't know that specifically, but what I

17 do know is, it's -- it was already -- it was earned.

18 You know, they wouldn't be giving it to him if he

19 hadn't earned it.

20 Q Well, weren't the unemployment benefits also

21 earned through the tax payments that were made?

22 A Certainly, but, but again, they were

23 triggered by the unemployment.

24 Q Right.

25 A By the separation.

Page 76

1 Q Right. And my question is, isn't it true
2 that IBM retirement distributions through their pension
3 plan would also be triggered by a separation of
4 employment from IBM?
5 A The actual payment of it would be, but the
6 fact that he, that he'd earned it already was not.
7 Q Okay. And --
8 A So from an economic standpoint that's, that
9 is, that is, that is something he was already entitled
10 to.
11 Q Okay. And so despite the fact that he
12 received \$30,000-plus in retirement benefits through
13 the pension plan during these years, you didn't feel
14 that that was appropriate to include in your report?
15 A That's correct.
16 Q And you also did not include in your report
17 IRA or 401(k) distributions that Mr. Sauro took during
18 that time period?
19 A That's correct.
20 Q You didn't include that as income?
21 A Certainly not.
22 Q As a CPA, Mr. Ramin, are, are retirement
23 distributions from a pension plan or from 401(k) or
24 IRAs, is that taxable income as far as the IRS is
25 concerned?

Page 77

1 A Certain of it is. A 401(k) is taxable
2 income. The -- you know, a Roth IRA wouldn't be, but I
3 don't know the specifics of, of his. But in either
4 case I don't think it's appropriate as an offset,
5 because those are assets they owned -- that he owned
6 out -- completely without regard to his separation.
7 Q How about distributions or -- that an
8 individual receives as part of a defined retirement
9 plan like a pension plan? Are those distributions that
10 an individual receives in the year taxable income as
11 far as the IRS is concerned?
12 A That's, that's my understanding.
13 Q Okay. But again, you didn't include it?
14 A Nope.
15 Q Are you aware that Mr. Sauro has indicated to
16 the IRS that he is retired?
17 A I, I saw that, that designation on, on one of
18 his tax forms.
19 MR. SMITH: Let's go ahead and pull
20 up that tax form. If we could go to Exhibit -- this is
21 going to be Exhibit 6 of Dr. Steward's report.
22 (Exhibit No. 7 marked off the
23 record.)
24 VIDEOGRAPHER: So 6 in Sauro?
25 MR. SMITH: Yes. 6 in Sauro.

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1 Sorry. Thank you. Perfect.
2 Q Mr. Ramin, what is, what is an IRS Form
3 1040-SR?
4 A It's a kind of a simplified Form 1040 that
5 can be used by folks that are eligible for it, and I
6 can't remember the exact, the exact date that you
7 become eligible for it.
8 Q It says "U.S. Tax Return for Seniors."
9 A Mm-hm.
10 Q Do you know why there's a designated form,
11 IRS form for seniors as opposed to others?
12 A I, I really, I don't know. It looks like
13 the -- it looks less -- it looks simplified to me, but
14 I, I really don't know the, the nuts and bolts of why
15 the IRS devised this separate form for those folks.
16 Q As a CPA you haven't come across this form
17 before?
18 A No. I've come across it before. I, I -- it,
19 it prints out on, on my TurboTax when I do, do the tax
20 return for my, my 86-year-old dad, but I don't --
21 Q And is your 86-year-old dad retired?
22 A Yes.
23 Q Okay. Can we go to the -- and is this, is
24 this a tax return for Michael Sauro?
25 A It looks to be.

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1 MR. SMITH: If we could go to the
2 next page.
3 Q And if we could focus on the bottom half
4 there, do you see at the bottom where it says "Paid
5 Preparer Use Only"?
6 A Yes.
7 Q And it says "Self-Prepared"?
8 A Yes.
9 Q Does that indicate that Mr. Sauro prepared
10 this document himself?
11 A Not necessarily.
12 Q Why do you say that?
13 A Well, go back to my, my analogy with -- or
14 my example with my dad. His, his returns say
15 "Self-Prepared," and I actually do it. It's just the
16 way TurboTax does it unless you check a box that you're
17 a, that you are a paid provider. Or --
18 Q Okay.
19 A -- a paid preparer. So it's, it's simply
20 a -- that's a self -- that's one of those things that
21 populates itself if you don't check, if you don't check
22 that preparer.
23 Q So this shows that it wasn't prepared by a
24 paid person, correct?
25 A That would be the implication.

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20 (Pages 77 to 80)

1 Q So it would either have had to have been
2 prepared by Mr. Sauro himself or somebody acting on his
3 behalf who's not paid?
4 A Yeah.
5 Q Okay. And do you see on there where it says
6 occupation "Retired"?
7 A Yes, sir.
8 Q Did you take that into account when you were,
9 when you were preparing the report on Mr. Sauro?
10 A No. I did not.
11 Q If in fact Mr. Sauro is retired and has been
12 since 2019, wouldn't that mean -- actually, this 2019
13 form would be for two thou- the year 2018, correct?
14 A I -- let me see the form again. I need to
15 see what, what it says.
16 Q Sure.
17 MR. SMITH: So if we go back to the
18 front page, first page.
19 A Yeah. I need to see what it says there. No.
20 This is, this is 2019. This is for 2,000- this is for
21 income that's received in 2019.
22 Q Okay. So this would have been --
23 A This would have been filed --
24 Q -- income in --
25 A I'm sorry.

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1 Q Right. So, okay, so this was actually for
2 the year 2019.
3 A Correct.
4 Q And this form should be showing everything
5 from January 1st, all income from January 1st, 2019
6 through December 31st, 2019, right?
7 A That would be your expectation.
8 Q And his -- the status -- his occupation that
9 is listed would have been the occupation that he had in
10 2019, correct?
11 A The form speaks for itself.
12 Q Okay. And the form states that he's retired
13 in 2019; isn't that right?
14 A That's what it says.
15 Q If Mr. Sauro retired in 2019, as far as
16 economic damages, he wouldn't be entitled to any
17 further economic damages from IBM; isn't that right?
18 A I --
19 MR. PRINGLE: Objection, form.
20 A I, I think that's ultimately a legal
21 question.
22 Q (By Mr. Smith) Well, what lost wages would
23 Mister -- what lost income would Mr. Sauro be entitled
24 to if he was retired as of 2019 from IBM?
25 A Now, you're, you're getting into a legal

Page 82

1 question here.
2 Q Would you --
3 A (Crosstalk)
4 Q -- agree that with -- would you agree that
5 when someone is retired they've taken themselves out of
6 the workforce?
7 A Again you're going to a legal question.
8 Q No. I'm asking you, Mr. Ramin, as a CPA and
9 as an expert witness in this case on damages. Would
10 you agree with me that somebody who is retired has
11 taken themselves out of the workforce?
12 MR. PRINGLE: Objection, form.
13 A I, I can, I can say I can agree with that,
14 that they are out of the workforce, but you don't know
15 why they're out of the workforce, and that's where I'm
16 getting to the legal question.
17 Q (By Mr. Smith) And in fact, Mr. Ramin, the
18 fact that Mr. Sauro shows zero -- well, shows only
19 \$5,850 in income over the last three years, isn't that
20 also an indication that he has taken himself out of the
21 workforce?
22 MR. PRINGLE: Objection, form.
23 A I don't think that that's an indication. He
24 obviously did something to earn that money.
25 Q (By Mr. Smith) And in your "Post-Trial Lost

Page 83

1 Income" you're continuing to show that he had zero
2 income; isn't that right?
3 A That's correct.
4 Q Why are you continuing to show him having
5 zero income through the year July '37?
6 A Mr., Mr. Sauro indicated he didn't see that
7 those -- consulting arrangement continuing with that
8 and wasn't aware of any other prospects that he had for
9 earnings.
10 Q Why, why did he say he wasn't aware of any
11 prospects for earnings?
12 A I don't know why, but that's, that's what he
13 indicated to me, that that was, that was something
14 that -- that that was a unique consulting opportunity
15 that he had but he didn't see that continuing and
16 wasn't aware of anything else.
17 Q Okay. So was it your understanding from
18 Mr. Sauro that he didn't intend to work any further for
19 the rest of his career?
20 A I don't think he gave me that impression. He
21 just said he didn't have any -- he didn't see any more
22 opportunities with that company and wasn't aware of
23 anything else that was out there.
24 Q Did he tell you he was looking?
25 A I don't know that that con- that conversation

Page 84

1 happened.

2 Q Did he tell you about any kind of steps he

3 was taking or has been taking to find a job?

4 A I don't recall that kind of conversation with

5 him.

6 Q And in fact your report has nothing to do

7 with -- you did no analysis on, on what their job

8 search was, correct?

9 A That's correct.

10 Q So if Mr. Sauro said, I don't think I can get

11 another job and I'm not going to get another job, you

12 just used that information in your assessment?

13 A Yes.

14 Q And even though his IRS form says that he's

15 retired, you just disregarded that in your assessment?

16 MR. PRINGLE: Objection, form.

17 A Yes. I, and I think I've been pretty clear

18 on, on why. I think that's ultimately a legal issue

19 and not something I, I'm involved in.

20 Q (By Mr. Smith) And based on that

21 information, you're claiming that Mr. Sauro should be

22 entitled to almost \$2 million from IBM; is that right?

23 A That's what the calculation says.

24 Q So the fact that Mr. Sauro has said he

25 doesn't think he can work or find another job, he's

Page 85

1 entitled to \$2 million, but these other plaintiffs who

2 have found jobs, they're entitled to less. Is that

3 your expert opinion?

4 A That's the way that --

5 MS. COUGHLIN: Objection, form.

6 A That's the way the economics work.

7 Q (By Mr. Smith) Based on your calculations,

8 correct?

9 A That's correct.

10 Q Let's go to Thanh Do. So if we could go

11 to -- first let's go to Thanh Do's portion of

12 Mr. Rambin's report.

13 Is this your portion of the report that

14 deals with Thanh Do?

15 A Yes, sir.

16 Q Did you speak with Ms. Do?

17 A Yes, I did.

18 Q And you show her age at termination being

19 58.54 years old?

20 A Correct.

21 Q And you have a projected retirement age of

22 66.84; is that right?

23 A Or 85. Yes.

24 Q 85? And is that because Ms. Do didn't give

25 you an anticipated retirement date?

Page 86

1 A No. She thought -- she, she expressed that

2 that, that seemed like a good time --

3 Q Is this another --

4 A -- to retire.

5 Q Is this another situation where you gave her

6 the number of a projected retirement age of 66.85 and

7 asked her whether she agreed with that or not?

8 A Yes.

9 Q Mr. Rambin, in your, in your report you, you

10 state that Ms. Do is expected to be totally injured for

11 the next six years. What do you mean by that?

12 A That, that she has, that she has not

13 demonstrated an ability to, to be employed.

14 Q What is her injury, what is her total injury

15 that is prevent- preventing, in your opinion is

16 preventing her from finding any job whatsoever?

17 A I have no idea.

18 Q So what did you base your opinion that she's

19 totally injured on?

20 A That she has not had any earnings other than

21 em- than unemployment since her termination from IBM,

22 and I, you know, I don't have any other information.

23 Q So couldn't that also be due to the fact that

24 she's not looking for a job?

25 A I --

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1 MR. PRINGLE: Objection, form.

2 Q (By Mr. Smith) Go ahead.

3 A That's, that's, that's beyond the scope of,

4 of what I've, what I've, what I've -- where my

5 expertise is.

6 Q Because you didn't take that into account at

7 all?

8 A I, I reported on what, what has actually

9 happened.

10 Q And if somebody -- if one of these plaintiffs

11 like Ms. Do just comes to you and says, I've had --

12 unable to find any job, I haven't taken a job and I've

13 had no income, you then utilize that information to say

14 she's totally injured; is that right?

15 A That's, that's all the information I have.

16 I, I have no earnings information for her.

17 Q You just take that at face value?

18 MR. PRINGLE: Objection, form.

19 A Again, that's, that is, that is my -- that is

20 not my job to, to do the vocational stuff.

21 Q (By Mr. Smith) So Mister -- Dr. Steward

22 states that based on his analysis and the statistics

23 he's looked at, she should be employ- it was expected

24 that she should be able to obtain employment within 24

25 weeks of beginning a sufficiently diligent job search.

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22 (Pages 85 to 88)

1 Do you disagree with that?

2 A I, I, I -- that's, that's outside the, the

3 realm of, of my report. I, I do kind of question how,

4 how, how that -- what supports that conclusion, but

5 that's, that's not, not my job.

6 Q So sitting here today you don't have any

7 information to dispute that, correct?

8 A I, I, I guess I do have some. I mean, I've

9 seen some in the, in the, in the files that have been

10 produced the, the, the evidence that she had applied

11 for lots of jobs in the reports that she was giving to

12 the TWC.

13 So I, again, I don't -- it's out of my

14 lane, that I can't, I can't, I can't, I can't, I can't

15 accept that I don't have any reason to disagree with

16 that, because I do see a fair amount of activity that,

17 that you'd have to report to the TWC.

18 Q And do you know what jobs she applied to?

19 A I can't recall as I'm sitting here.

20 Q Right. Because you haven't done any analysis

21 with regard to Ms. Do as to what her job search was,

22 whether it was reasonable or not, right?

23 A I didn't, I didn't try to make that

24 assessment, but I did, I did read through that

25 information and saw that it was for -- with different

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1 technology companies and things like that, but again,

2 I, I don't have an overall opinion on that.

3 Q Right. You're not able to provide an expert

4 opinion one way or another on that issue of her job

5 search and how long it should have taken her to do a

6 reasonable search, correct?

7 A Well, you're, you're changing question here.

8 The question that I was responding to was, do I have

9 any basis to disagree with, with Dr. Steward's

10 assessment or conclusion, and I, I just had -- I

11 couldn't -- I can't just accept that without citing

12 I've seen evidence to the contrary. I --

13 Q Okay. Let me make sure my question is clear.

14 You haven't done any analysis whatsoever with regard to

15 whether Dr. Steward's opinion that it would have been

16 reasonable to expect for her to get a job within 24

17 weeks of beginning a sufficient job search, you, you

18 haven't done any analysis on that, correct?

19 A That's correct.

20 Q Okay. And because of that you're not in a

21 position to give an expert opinion on that, correct?

22 A Yes.

23 Q Okay.

24 MR. SMITH: And if we go to the

25 next page. And the page after that, I'm sorry. So if

Page 90

1 we could go ahead and look at that whole page there.

2 Q And she's showing as a senior software

3 engineer; is that correct?

4 A Correct.

5 Q Did you determine that that was a

6 management-level position?

7 A I don't, I don't know that I made that, that

8 determination.

9 Q But you used the benefits percentage

10 calculation for a manager for her as well, correct?

11 A That's correct.

12 MR. SMITH: If we could go down

13 further.

14 Q We're showing --

15 MR. SMITH: If we could just go up

16 a little bit, I'm sorry.

17 Q So does this show that the only income that

18 Ms. Do has received since the time she was terminated

19 from IBM is unemployment benefits?

20 A Yes.

21 Q And that she has not had any other income

22 other than unemployment benefits?

23 A That's, that's my understanding.

24 MR. SMITH: And if we could go down

25 further.

Page 91

1 Q And you're showing that she's not going to

2 have any income whatsoever through December 30- well,

3 through August of 2045; is that right?

4 A No. That's, that's, that is a typo. It

5 actually runs through 12/31/27.

6 Q Okay. So your expert opinion that you're

7 providing to the jury is that she is not going to

8 receive any income and not get any job through December

9 31st, 2027; is that right?

10 A Yeah. I have, I have no evidence on that.

11 Q And you're basing that on your interview with

12 her?

13 A And the -- my interview with her and the fact

14 that all we've seen since her termination was, was

15 unemployment benefits. So I have no evidence to the

16 contrary.

17 Q And so because it's your assessment that

18 she's not going to get any job whatsoever between now

19 and December 31st, 2027, she's entitled to over a

20 million dollars from IBM; is that right?

21 A That's what the calculation shows. It's, you

22 know, it's not my, it's not my determination to say

23 what she's owed; that's the fact-finder. But that is

24 the calculation.

25 Q And because she didn't get any job between

Page 92

1 the time that she left IBM and September 30th of 2022,
 2 IBM should pay her \$539,651; is that right?
 3 A That's what the calculation shows.
 4 MR. SMITH: Let's go to Rosa
 5 Davidson. If we could go to that in Mr. Rambin's
 6 report.
 7 Q Is this the portion of your report,
 8 Mr. Rambin, that you prepared regarding plaintiff Rosa
 9 Davidson?
 10 A Yes, it is.
 11 Q And again you're showing her projected age of
 12 retirement as 70?
 13 A Yes.
 14 Q And is this also based on her just telling
 15 you that?
 16 A It's that. I believe it was also, it was
 17 supplemented by her -- her deposition was taken after
 18 my report, but I believe she stated that as well in her
 19 deposition.
 20 Q And I'm going to object as assuming facts not
 21 in evidence unless you can point to something in her
 22 deposition that says she intended to work until 70
 23 years old.
 24 A Okay.
 25 Q So at the time that you created this -- is it

Page 93

1 your testimony that you relied on something other than
 2 her -- your interview with her to come up with this
 3 70-year-old projected retirement age?
 4 A No. At the time of the report that, that's
 5 what I relied on as her stated intention.
 6 Q Okay.
 7 MR. SMITH: And if we could go to
 8 the next page.
 9 Q So you show her -- well, first off, she's a,
 10 a -- occupation is a software developer?
 11 A Yes. I see that.
 12 Q Is there anything in there that leads you to
 13 believe she's a manager?
 14 A No.
 15 Q You list her salary as \$147,372; is that
 16 right?
 17 A Correct.
 18 Q And in your --
 19 MR. SMITH: Well, let's, let's go a
 20 little bit further down.
 21 Q In the -- in your projections here you show
 22 Ms. Davidson as earning \$145,000 a year with Cognizant
 23 Technology; is that right?
 24 A That's correct.
 25 Q Were you aware that she's also entitled to a

Page 94

1 \$15,000 bonus?
 2 A I don't have a recollection of that.
 3 Q You didn't include that in your assessment,
 4 correct?
 5 A That's correct.
 6 Q And as of the time even that she started
 7 with her initial salary of \$145,000, that's two thou-
 8 approximately, yeah, around --
 9 MR. SMITH: Let's go back to the
 10 top.
 11 Q That's \$2,372 less than her initial salary
 12 at -- her last salary at IBM; is that right?
 13 A That's correct.
 14 Q And if she gets the \$15,000 bonus, then
 15 that's more than she was making at IBM; isn't that
 16 right?
 17 A Yes.
 18 Q And if she received a bonus in 2020 on top
 19 that's more than \$2,372, then she would have no lost
 20 salary during that time, correct?
 21 A Let's be clear here that she didn't start
 22 until November of '20. So that, that initial salary of
 23 145 is just for a month. It seems pretty unlikely
 24 there would have been a bonus in that, in that
 25 one-month period.

Page 95

1 Q Okay. Well, if she received it in 2021.
 2 A Then, then it, then it starts exceeding the,
 3 the IBM salary.
 4 Q And when it starts exceeding the IBM salary
 5 she's not entitled to any lost wages on that, correct?
 6 A Well, except that I'm not, I'm not seeing how
 7 the projection -- her projected earnings from IBM at
 8 the 3 percent increase is -- yeah. I, I can't see --
 9 Q Well, let's --
 10 A -- that part of the report.
 11 Q Let's look down.
 12 A Okay.
 13 MR. SMITH: Right there.
 14 Q So she would have to -- if we add 15,000 to
 15 147, she would have to make more than \$162,372 at IBM,
 16 correct?
 17 MR. PRINGLE: Objection, form.
 18 A I, I'm sorry. I don't see that number you're
 19 referring to.
 20 Q (By Mr. Smith) Sure. So if she's making
 21 145,000 plus 15, that's \$160,000, right?
 22 A 145 plus 15 is 160. Okay.
 23 Q So that would be what, what her target
 24 compensation is for working at Cognizant. Would you
 25 agree with me?

Page 96

24 (Pages 93 to 96)

1 MR. PRINGLE: Objection --

2 A Okay.

3 Q (By Mr. Smith) Do you agree with me?

4 A I agree that those two numbers equal 160.

5 Q Well, let's just make sure we're on the

6 same --

7 MR. SMITH: So let's, let's go to

8 Exhibit 5 of Dr. Steward's report regarding Davidson.

9 Q I don't want you to just take my word for it.

10 Does this appear to be an offer letter to Ms. Davidson

11 dated November 3rd, 2020?

12 A Yes.

13 Q From Cognizant?

14 A Yes.

15 MR. SMITH: And if we go to the

16 next page -- actually I want to go ahead and have this

17 marked as the next exhibit, please.

18 (Exhibit No. 8 marked off the

19 record.)

20 THE REPORTER: That'll be 6.

21 MR. SMITH: And I've been bad,

22 Sandy. Have I not been putting these other things in

23 as exhibits?

24 THE REPORTER: You have not.

25 Uh-oh.

Page 97

1 MR. SMITH: Okay.

2 THE REPORTER: Would you like me to

3 go back and --

4 MR. SMITH: You know, why don't --

5 I want to make sure that I've done that. Just let's do

6 some housekeeping. Each document that I've pulled up

7 and questioned him about I want to have as an, an

8 exhibit consecutively. Ross, are you okay with that?

9 I mean, we can go back and redo, but I just -- each

10 document that I've questioned him about I need those to

11 be marked as an exhibit.

12 MR. PRINGLE: Well, we don't we do

13 that so we'll know what to call this one.

14 MR. SMITH: Okay. Do we -- we

15 probably need to take a quick break then, let, let

16 Sandy do that. And I apologize. I should have been

17 doing that all along. That's -- this is the problem

18 with Zoom depositions.

19 VIDEOGRAPHER: And we're off the

20 record. The time is 11:57 a.m.

21 (At 11:57 a.m. the proceedings

22 recessed, continuing at 12:27 p.m.)

23 VIDEOGRAPHER: We're back on the

24 record at 12:27 p.m., beginning of media 3.

25 Q (By Mr. Smith) Mr. Rabin, have you had an

Page 98

1 opportunity to take a break?

2 A Yes.

3 Q And I apologize, it was a little longer than

4 anticipated. That's my fault. Are you ready to

5 proceed?

6 A Yes, sir.

7 Q And I'd just remind you that you're still

8 under oath.

9 A Understood.

10 Q So before we went on a break we were looking

11 at this latest exhibit, which is an offer letter from

12 Cognizant to Ms. Davidson, do you see that, dated

13 November 3rd, 2020?

14 A Yes.

15 Q And if we go to the next page, do you see at

16 the top it talks about her base salary and target

17 bonus?

18 A Yes, I do.

19 Q And does it show that her base salary is

20 \$145,000?

21 A Yes, sir.

22 Q And does it also show that her target bonus

23 is 15,000?

24 A Yes.

25 Q So if we added those two together, that would

Page 99

1 be \$160,000, correct?

2 A That's true.

3 Q And \$160,000 is more than the \$147,372 that

4 she was earning at IBM at the time of her termination,

5 correct?

6 A Yes.

7 MR. SMITH: And if we could now go

8 back to Exhibit 1, the section involving Ms. Davidson,

9 which is Mr. Rabin's report involving Ms. Davidson,

10 and if we can look at the pre- highlight the bottom

11 half, "Pre-Trial Lost Income" and "Post-Trial Lost

12 Income."

13 Q Would you agree with me, Mr. Rabin, that if,

14 if her compensation at Cognizant is \$160,000 salary

15 plus bonus beginning in 2021, that is higher than the

16 income that you're showing for her for IBM? Is that

17 right?

18 A Well, again, keep in mind that what's in '21

19 is really -- okay. Yeah. That's, that's the first

20 full year. Sorry. Yeah. That -- if that's the case,

21 that would -- that's a larger number. You know, we'd

22 be comparing 156 to 160. So, yeah, it's a larger

23 number.

24 Q And because that's a larger number and you

25 keep -- and you continue to add 3 percent going

Page 100

25 (Pages 97 to 100)

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1 forward, that number at Cognizant would always be
2 higher than the number at IBM; isn't that right?
3 A You know, assuming everything kept, kept
4 increasing at a, at a similar pace, that, that seems
5 like that would be the conclusion.
6 Q So if all that is correct, her economic
7 dam- and, and you've already testified that her
8 benefits are comparable, correct?
9 A That's correct.
10 Q So if, if all of that is correct, then her
11 damages would cut off from lost income beginning in
12 January of 2021; isn't that right?
13 A Yeah. They would, they would not increase.
14 Q So that would mean her total damages, even
15 according to your calculations, would be approximately
16 \$158,000, 48,556 plus 110,291; is that right?
17 A That, that would appear to be correct.
18 Q Okay. Thank you.
19 MR. SMITH: If we could then go to
20 the portion of Exhibit No. 1 that deals with Walter
21 Noffsinger.
22 Q Mr. Ramin, is this the portion of your
23 expert report that references Walter Noffsinger?
24 A Yes, sir.
25 Q Who's one of the plaintiffs in this case?

Page 101

1 And in here again this is where you have as projected
2 retirement age at 70 years old; is that correct?
3 A That's, that's -- was his intention. That's
4 what he stated.
5 Q And you -- that, that was my question. So
6 you base that 70-year-old projected retirement age
7 based on his statements to you?
8 A Yes.
9 Q Did you base it on anything else other than
10 his statements to you?
11 A No.
12 MR. SMITH: If we could go to the
13 next page of that document.
14 Q Do you see that you show Mister --
15 MR. SMITH: If we could highlight
16 that upper page. Thank you.
17 Q Do you see that you show Mr. Noffsinger's
18 salary -- or his, his last, his last salary at IBM
19 being \$347,987?
20 A Yes, I do.
21 Q What did you base that off of?
22 A His W-2 form for 2019.
23 Q So you only used one year, the 2019 number?
24 You didn't do an average with him?
25 A No. I did not.

Page 102

1 MR. SMITH: Okay. Could we mark as
2 the next -- go to Tab 8 of Dr. Steward's report
3 regarding Mr. Noffsinger, and that's going to be the
4 next exhibit.
5 (Exhibit No. 9 marked off the
6 record.)
7 Q Have you seen this document before,
8 Mr. Ramin?
9 A I believe so. It looks similar to other
10 documents that we've talked about today.
11 Q And is this showing -- does this appear to be
12 an IBM document showing Mr. Noffsinger's compensation
13 for 2018, 2019, and 2020?
14 A Yes.
15 Q And you said you utilized 2019, correct?
16 A I utilized 2019 W-2.
17 Q Well, would you agree with me, would you
18 agree with me that Mr. Noffsinger's -- that the number
19 that you show in your report should only be IBM income
20 for 2019? It shouldn't be any other income?
21 A I'm not sure what you mean by that.
22 Q Should the \$347,987 number that you used in
23 your report only refer to IBM income for Mr. Noffsinger
24 in 2019?
25 A Yes.

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1 Q So it wouldn't matter what other income might
2 show up on his W-2 -- or his, or his tax information.
3 It's, it's what he earned from IBM that's important in
4 2019, correct?
5 A Right. That's, that's the number that comes
6 directly from his W-2, the 347.
7 Q Okay. So let's look at these numbers here.
8 220,098.60 plus \$62,400.
9 A Yep.
10 Q That should be the, that should be the
11 amount, right?
12 A No. His compensation also is the restricted
13 stock that he was able to, that he was able to cash in.
14 Q So you're including that restricted stock
15 release as income for him?
16 A Yeah. That's, that's taxable, you know, it's
17 taxable when it's actually exercised, and that's part
18 of his compensation package.
19 Q Okay. Well, if I add that in, that comes to
20 \$355,545.92. So that's not --
21 A Yeah. I mean -- well, I think there's --
22 Q That's not 347,987.
23 A Well, I, I don't disagree with you, but
24 that's the number that's on, that is on his W-2, I'm
25 quite sure of that, and so it has to do with, with some

Page 104

1 A Correct.

2 Q And yet despite that you're projecting her

3 retirement to go to 69?

4 A Well, she's, she's working right now.

5 MR. SMITH: If we could go to the

6 next page. Now, if you'll go to the page after that.

7 Q You show her last salary at IBM as being

8 \$99,996; is that right?

9 A Yes.

10 Q And beginning in --

11 MR. SMITH: If we go down further

12 in the page.

13 Q Do you show her salary in beginning January

14 1st, 2020 as \$120,000?

15 A Yes, I do.

16 Q What are you basing that off of?

17 A As I'm sitting here I don't have a, I don't

18 know I don't have a clear recollection of, of that,

19 that specific document. If you'd -- I can refer to my

20 report and see if I can pick it up from the, the -- my

21 Exhibit B.

22 Q Well, let's go to Exhibit 3 of the

23 Dr. Steward report --

24 A Okay.

25 Q -- regarding Ms. Gelphman.

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1 A Okay.

2 MR. SMITH: And this is going to be

3 marked as the next exhibit.

4 (Exhibit No. 10 marked off the

5 record.)

6 Q Do you see is this an offer letter to

7 Ms. Gelphman from Blue Yonder dated February 26, 2020?

8 A Yes. I see that.

9 Q Do you see that the salary for her position

10 will be \$150,000?

11 A Yes.

12 Q So the \$120,410 amount that you had in your

13 report would be incorrect, right?

14 A No. She, she's not starting until, you know,

15 two months into the year.

16 Q Okay. Well, let's --

17 A Her start date is March 9th, 2020.

18 Q Okay. Well, let's look at the next period in

19 your report, January 1st, 2021 to December 31st, '21.

20 It also shows \$120,410, right?

21 A Yeah. I see that.

22 Q So that'd be incorrect, wouldn't it?

23 A Possibly.

24 Q And are you aware that Ms. Gelphman testified

25 that she actually got a raise to \$157,000 while she was

Page 110

1 at Blue Yonder?

2 A I was not aware of that.

3 Q So that would also make these numbers

4 incorrect, wouldn't it?

5 A Yeah. That would, that would change, that

6 would change the math for sure.

7 Q And in any event, your calculations are

8 showing that her damages, her, her lost income damages

9 cut off as of December 31st, 2019, right?

10 A Yeah. Yeah. And, and yeah, that, that, that

11 would probably happen earlier if we had those larger

12 numbers.

13 Q It would probably happen earlier than that,

14 correct?

15 A If, if, if that number needs to be larger --

16 Q Okay.

17 A -- future income number.

18 Q And that would also affect the benefits that

19 you calculated on here as well, right?

20 A Yes, it would.

21 Q Okay. And you're using --

22 MR. SMITH: Let me go, let's go

23 back to the first page of -- or actually if we could

24 just zoom out of that zoom.

25 Q You're using the 44.38 percent for benefits

Page 111

1 calculations; is that correct?

2 A Yes, I am.

3 Q And do you see her occupation is UX designer?

4 A Yes.

5 Q Is there anything about her job title as UX

6 designer that leads you to believe she was in

7 management?

8 A No.

9 Q And yet you were using a management, you were

10 using management data from BLS to calculate this

11 benefits percentage; is that right?

12 A Yes.

13 Q Do you still believe that to be correct?

14 A Yes.

15 Q Why?

16 A Because the compensation levels that, that

17 we're talking about with all these people is more

18 comparable to that that was in that table than those

19 other, those other lower numbers. If you look what

20 those people are being paid in that data, these, these

21 people are more comparable with that, that level.

22 Q And you don't think that -- you believe that

23 was the best data source to utilize for this benefits

24 percentage calculation?

25 A Yes.

Page 112

1 Q You don't believe there was a better table to
2 use or data number to use for a UX designer than
3 management?
4 A No.
5 Q Okay.
6 MR. SMITH: If we can go to the
7 portion of Mr. Ramin's report regarding Michael Kelly.
8 Q You show on here projected retirement age as
9 66.73. Again is this because Mr. Kelly did not provide
10 you with an estimation himself of what his retirement
11 age would be?
12 A He, yeah, he didn't, he didn't -- he, he
13 accepted that as, as what is in line with his
14 expectations.
15 Q And again, 66.73 is the number that you
16 provided to him?
17 A Correct.
18 MR. SMITH: If we could go to the
19 next page, and if we could go down, further down on
20 that page.
21 Q If we could look at the "Pre-Trial Lost
22 Income," do you see that you show zero income or
23 benefits for him from June 30th to, 2018, to December
24 31st, 2018?
25 A Yes, I do.

Page 113

1 Q Do you have any opinion as to whether that
2 was reasonable for him to be without any income or
3 benefits during that time?
4 A I have no opinion on that.
5 MR. SMITH: If we could go back for
6 a moment to the exhibit with the tables, which is U.S.
7 Bureau of Labor Statistics -- I believe it's probably
8 Exhibit 2 or 3 -- and if we can go to Table 5. And if
9 we could go to the second to next page, and if we could
10 zero in at the top on the "Management, business,
11 financial" up there.
12 Q Mr. Ramin, I just want you to explain to me,
13 so I'm clear, the math that you used to determine the
14 44.38 percent that you, that you used for the benefits
15 percentage for each of these plaintiffs.
16 A Sure. So if you'd look at "Management,
17 business, and financial," and in the "Cost" column
18 you'll see that the actual wages and salaries are \$50.7
19 per hour and that the benefits are \$22.5 per hour. And
20 if you divide -- do division with the numerator of
21 22.5, the denominator of 50.7, that will get you 44.38.
22 Q Okay. That's what I needed to know.
23 Throughout your report, Mr. Ramin, you use a discount
24 rate of 2 and a half percent per year versus 3 and a
25 half percent per year for 10 years; is that right?

Page 114

1 A Let me look, make sure I, I'm answering
2 accurately here. Yes. So, so for past damages I'm
3 using 2 percent, and for future damages I'm using 2 and
4 a half percent.
5 Q And those were your -- that was based on a
6 discount rate back in February of 2022, right, when you
7 did this?
8 A Right. And it was based on Federal Open
9 Market Committee, their, their, their interest rate
10 projections as of December 15th, 2021, and I, I think
11 the, the interest rate environment has, has, has
12 changed since there.
13 Q It's actually gone up about a point, hasn't
14 it?
15 A Yeah. I absolutely -- yeah. And so I
16 anticipate that, that that, that that would be
17 something that if, if I was asked to update a report, I
18 would think that would, that would change. And so that
19 would, that would have an effect of reducing the
20 calculation.
21 Q Okay. Mr. Ramin, at this point I don't
22 think I have any further questions.
23 MR. SMITH: And I'll pass the
24 witness.
25 MR. PRINGLE: We will reserve.

Page 115

1 MR. SMITH: Thank you for your
2 time.
3 THE WITNESS: Do you need any
4 spellings from me, Ms. Givens?
5 THE REPORTER: I've got everything.
6 Thank you.
7 VIDEOGRAPHER: Okay. We're off the
8 record at 12:58 p.m. This concludes media 3.
9 (At 12:58 p.m. the proceedings
10 adjourned.)
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Page 116

29 (Pages 113 to 116)

[illegible]

1 attorneys in the action in which this proceeding was
2 taken, and further, that I am not financially or
3 otherwise interested in the outcome of the action.
4

5 Certified to by me this 17th day of May 2022.
6

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U.S. BUREAU OF LABOR STATISTICS

Bureau of Labor Statistics > Economic News Release

Economic News Release

ECT PRINT

Employer Costs for Employee Compensation News Release

For release 10:00 a.m. (ET) Thursday, March 18, 2021

USDL-21-0437

Technical information: (202) 691-6199 * ncsinfo@bls.gov * www.bls.gov/ect
 Media contact: (202) 691-5902 * pressoffice@bls.gov

EMPLOYER COSTS FOR EMPLOYEE COMPENSATION - DECEMBER 2020

Employer costs for employee compensation for civilian workers averaged \$38.60 per hour worked in December 2020, the U.S. Bureau of Labor Statistics reported today. Wages and salaries cost employers \$26.53 and accounted for 68.7 percent of total costs, while benefits cost \$12.07 and accounted for the remaining 31.3 percent. (See table 1.)

State and local government employer costs averaged \$53.47 per hour worked. Wages and salaries averaged \$33.08 per hour worked and represented 61.9 percent of total compensation costs, while benefit costs averaged \$20.39 and accounted for the remaining 38.1 percent. (See tables 1 and 3.)

Total employer compensation costs for private industry workers averaged \$36.23 per hour worked in December 2020. Wage and salary costs averaged \$25.48 and accounted for 70.3 percent of employer costs, while benefit costs were \$10.74 and accounted for 29.7 percent. (See tables 1 and 4.)

Within total benefits, supplemental pay costs averaged \$1.15 per hour worked or 3.0 percent of total compensation for civilian workers, \$1.25 per hour worked (3.5 percent) for private industry workers, and \$0.54 per hour worked (1.0 percent) for workers in state and local government. (See table 1.)

Supplemental pay includes employer costs for employee shift differentials (extra payments for working a non-traditional work schedule), overtime and premium pay (pay in addition to the regular work schedules, and pay for work on weekends and holidays), and nonproduction bonuses (such as holiday bonuses or end-of-year bonuses which are given at the discretion of the employer and are not tied to a production formula).

For private industry workers, nonproduction bonuses cost employers \$0.84 per employee hour worked or 2.3 percent of total compensation, overtime and premium pay cost \$0.33 per hour worked (0.9 percent), and shift differentials cost \$0.08 per hour worked (0.2 percent). (See table 1.)

Supplemental pay costs by occupational group ranged from \$0.38 per employee hour worked or 2.1 percent of total compensation in service occupations to \$2.28 (3.7 percent) in management, professional, and related occupations. (See table 4.)

Nonproduction bonus costs ranged from \$0.14 per employee hour worked or 0.8 percent of total compensation in service occupations to \$1.97 (3.2 percent) in management, professional, and related occupations, while overtime and premium pay costs ranged from \$0.17 (1.0 percent) in service occupations to \$0.94 (2.4 percent) in natural resources, construction, and maintenance occupations.

Supplemental pay costs varied by bargaining unit status. Supplemental pay costs for union workers were \$1.86 per hour worked or 3.6 percent of total compensation, while costs for nonunion workers were \$1.20 (3.4 percent). (See table 5.) Overtime and premium costs was the largest component of supplemental pay costs for union workers at \$0.94 per hour worked, while for nonunion workers the largest component was nonproduction bonus costs at \$0.86.

Estimates for supplemental pay components are available through the database query tool at www.bls.gov/ncs/ect/data.htm.

Coronavirus (COVID-19) Pandemic Impact on December 2020 ECEC Data
 The Employer Costs for Employee Compensation (ECEC) reference date was December 12, 2020.
 Response rates for December were comparable with prior releases, and no changes in estimation procedures were necessary. Additional information is available at www.bls.gov/covid19/effects-of-covid-19-on-workplace-injuries-and-illnesses-compensation-and-occupational-requirements.htm#ECEC.

Employer Costs for Employee Compensation for March 2021 is scheduled to be released on Thursday, June 17, 2021, at 10:00 a.m. (ET).

TECHNICAL NOTE

Employer Costs for Employee Compensation (ECEC), a product of the National Compensation Survey, provides the average employer cost for wages and salaries as well as benefits per employee hour worked. The ECEC covers the civilian economy, which includes data from both private industry and state and local government. Excluded from private industry are the self-employed, agricultural workers, and private household workers. Federal government workers are excluded from the public sector.

All workers are included in the benefit cost estimates including those that do not have plan access or do not participate. Costs are also affected by other factors such as cost sharing between employers and employees, plan features, and plan generosity. For the latest information on the percentage of workers with access to and participating in employer-sponsored benefit plans, including health care and retirement and savings plans, see www.bls.gov/ebs.

EXHIBIT

2

sg

Rambin

5-12-22

The "National Compensation Measures" provides additional details on the sample design, calculation methodology, and resources explaining changes over time. (See www.bls.gov/opub/hom/ncs/home.htm.)

Additional ECEC estimates, including historical data, are available in the ECEC database query tool at www.bls.gov/ncs/ect/data.htm.

Sample size:

Data for this reference period were collected from a probability sample of approximately 24,600 occupational observations selected from a sample of about 6,000 private industry establishments and approximately 7,800 occupational observations selected from a sample of about 1,400 state and local government establishments that provided data at the initial interview.

Measures of reliability:

Relative standard errors (RSEs) provide users a tool to ascertain the quality of an estimate to ensure that it is within an acceptable range for their intended purpose. RSEs are available at www.bls.gov/ncs/ect/ecec-rse.htm and database query tool at www.bls.gov/ncs/ect/data.htm.

Comparisons:

Compensation cost levels in state and local government should not be directly compared with levels in private industry. Differences between these sectors stem from factors such as variation in work activities and occupational structures.

Area definitions:

Metropolitan area definitions have been updated based on Office of Management and Budget Bulletin No. 13-01, dated February 28, 2013. (See www.census.gov/programs-surveys/metro-micro.html.)

Publication focus:

Topics of news releases for the upcoming reference periods are as follows:

- * March 2021 – compensation costs by wage percentile and 15 metropolitan areas in private industry
- * June 2021 – benefits costs in private industry
- * September 2021 – compensation costs in state and local government

The 2021 ECEC release dates are available at www.bls.gov/schedule/news_release/ecec.htm.

Table 1. Employer Costs for Employee Compensation by ownership
[Dec. 2020]

Compensation component	Civilian workers ⁽¹⁾		Private industry workers		State and local government workers	
	Cost (\$)	Percent of compensation	Cost (\$)	Percent of compensation	Cost (\$)	Percent of compensation
Total compensation⁽²⁾	38.60	100.0	36.23	100.0	53.47	100.0
Wages and salaries	26.53	68.7	25.48	70.3	33.08	61.9
Total benefits	12.07	31.3	10.74	29.7	20.39	38.1
Paid leave	2.87	7.4	2.69	7.4	4.04	7.6
Vacation	1.40	3.6	1.38	3.8	1.52	2.9
Holiday	0.85	2.2	0.80	2.2	1.14	2.1
Sick	0.46	1.2	0.37	1.0	1.03	1.9
Personal	0.17	0.4	0.14	0.4	0.35	0.7
Supplemental pay	1.15	3.0	1.25	3.5	0.54	1.0
Overtime and premium⁽³⁾	0.32	0.8	0.33	0.9	0.23	0.4
Shift differentials	0.07	0.2	0.08	0.2	0.05	0.1
Nonproduction bonuses	0.76	2.0	0.84	2.3	0.25	0.5
Insurance	3.28	8.5	2.81	7.8	6.23	11.7
Life	0.05	0.1	0.04	0.1	0.07	0.1
Health	3.12	8.1	2.65	7.3	6.07	11.4
Short-term disability	0.07	0.2	0.07	0.2	0.03	0.1
Long-term disability	0.05	0.1	0.04	0.1	0.05	0.1
Retirement and savings	1.99	5.2	1.25	3.4	6.65	12.4
Defined benefit	1.21	3.1	0.42	1.2	6.18	11.6
Defined contribution	0.78	2.0	0.82	2.3	0.47	0.9
Legally Required benefits	2.77	7.2	2.75	7.6	2.94	5.5
Social Security and Medicare	2.16	5.6	2.14	5.9	2.29	4.3

Footnotes

- (1) Includes workers in the private nonfarm economy except those in private households, and workers in the public sector, except the federal government.
- (2) Includes costs for wages and salaries and benefits.
- (3) Includes premium pay for work (such as overtime, weekends, and holidays) in addition to the regular work schedule.
- (4) Social Security refers to the Old-Age, Survivors, and Disability Insurance (OASDI) program.
- (5) Cost per hour worked is \$0.01 or less.
- (6) Less than .05 percent.

Compensation component	Civilian workers ⁽¹⁾		Private industry workers		State and local government workers	
	Cost (\$)	Percent of compensation	Cost (\$)	Percent of compensation	Cost (\$)	Percent of compensation
Social Security ⁽⁴⁾	1.72	4.5	1.71	4.7	1.75	3.3
Medicare	0.44	1.1	0.42	1.2	0.54	1.0
Federal unemployment insurance	0.02	0.1	0.03	0.1	(5) -	(6) -
State unemployment insurance	0.13	0.3	0.14	0.4	0.06	0.1
Workers' compensation	0.47	1.2	0.45	1.2	0.58	1.1

Footnotes

(1) Includes workers in the private nonfarm economy except those in private households, and workers in the public sector, except the federal government.

(2) Includes costs for wages and salaries and benefits.

(3) Includes premium pay for work (such as overtime, weekends, and holidays) in addition to the regular work schedule.

(4) Social Security refers to the Old-Age, Survivors, and Disability Insurance (OASDI) program.

(5) Cost per hour worked is \$0.01 or less.

(6) Less than .05 percent.

Table 2. Employer Costs for Employee Compensation for civilian workers by occupational and industry group
[Dec. 2020]

Series	Total compensation ⁽¹⁾		Wages and salaries		Total benefits		Paid leave		Supplemental pay		Insurance		Retirement and savings		Legally required benefits	
	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent
Civilian workers ⁽²⁾	38.60	100.0	26.53	68.7	12.07	31.3	2.87	7.4	1.15	3.0	3.28	8.5	1.99	5.2	2.77	7.2
Occupational group																
Management, professional, and related	62.29	100.0	42.47	68.2	19.82	31.8	5.46	8.8	1.82	2.9	5.00	8.0	3.70	5.9	3.85	6.2
Management, business and financial	72.43	100.0	49.58	68.5	22.85	31.5	7.03	9.7	2.98	4.1	4.97	6.9	3.45	4.8	4.43	6.1
Professional and related	57.71	100.0	39.27	68.0	18.45	32.0	4.75	8.2	1.29	2.2	5.01	8.7	3.81	6.6	3.59	6.2
Teachers ⁽³⁾	65.04	100.0	44.20	68.0	20.84	32.0	3.42	5.3	0.25	0.4	6.35	9.8	7.45	11.5	3.37	5.2
Primary, secondary, and special education school teachers	63.78	100.0	42.35	66.4	21.43	33.6	2.95	4.6	0.21	0.3	6.91	10.8	8.30	13.0	3.06	4.8
Registered nurses	59.30	100.0	38.58	65.1	20.72	34.9	6.07	10.2	2.20	3.7	5.47	9.2	3.02	5.1	3.96	6.7
Sales and office	28.33	100.0	19.98	70.5	8.35	29.5	1.91	6.7	0.76	2.7	2.63	9.3	1.00	3.5	2.06	7.3
Sales and related	27.34	100.0	20.78	76.0	6.56	24.0	1.55	5.7	0.80	2.9	1.54	5.6	0.59	2.2	2.08	7.6
Office and administrative support	28.98	100.0	19.45	67.1	9.53	32.9	2.14	7.4	0.73	2.5	3.35	11.5	1.26	4.4	2.05	7.1
Service	20.71	100.0	14.84	71.7	5.87	28.3	1.10	5.3	0.44	2.1	1.62	7.8	0.94	4.5	1.76	8.5
Natural resources, construction, and maintenance	38.97	100.0	26.12	67.0	12.85	33.0	2.22	5.7	1.38	3.5	3.38	8.7	2.33	6.0	3.55	9.1
Construction, extraction, farming, fishing, and forestry	39.92	100.0	26.40	66.1	13.51	33.9	1.84	4.6	1.46	3.6	3.49	8.8	2.87	7.2	3.85	9.6

Footnotes

(1) Includes costs for wages and salaries and benefits.

(2) Includes workers in the private nonfarm economy except those in private households, and workers in the public sector, except the federal government.

(3) Includes postsecondary teachers; primary, secondary, and special education teachers; and other teachers and instructors.

[illegible]

Table 3. Employer Costs for Employee Compensation for state and local government workers by occupational and industry group
[Dec. 2020]

Series	Total compensation ⁽¹⁾		Wages and salaries		Total benefits		Paid leave		Supplemental pay		Insurance		Retirement and savings		Legally required benefits	
	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent
State and local government workers	53.47	100.0	33.08	61.9	20.39	38.1	4.04	7.6	0.54	1.0	6.23	11.7	6.65	12.4	2.94	5.5
Occupational group																
Management, professional, and related	64.02	100.0	41.02	64.1	23.00	35.9	4.55	7.1	0.42	0.7	6.79	10.6	7.94	12.4	3.30	5.2
Professional and related	62.20	100.0	40.17	64.6	22.03	35.4	4.05	6.5	0.40	0.6	6.75	10.8	7.66	12.3	3.19	5.1
Teachers ⁽²⁾	70.59	100.0	46.92	66.5	23.67	33.5	3.52	5.0	0.27	0.4	7.29	10.3	9.22	13.1	3.38	4.8
Primary, secondary, and special education school teachers	70.13	100.0	45.98	65.6	24.15	34.4	3.14	4.5	0.24	0.3	7.77	11.1	9.80	14.0	3.19	4.5

Footnotes

⁽¹⁾ Includes costs for wages and salaries and benefits.

⁽²⁾ Includes postsecondary teachers; primary, secondary, and special education teachers; and other teachers and instructors.

Series	Total compensation ⁽¹⁾		Wages and salaries		Total benefits		Paid leave		Supplemental pay		Insurance		Retirement and savings		Legally required benefits	
	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent
Sales and office	37.14	100.0	21.25	57.2	15.89	42.8	3.26	8.8	0.34	0.9	5.88	15.8	4.22	11.4	2.20	5.9
Office and administrative support	37.29	100.0	21.29	57.1	16.00	42.9	3.27	8.8	0.34	0.9	5.95	16.0	4.24	11.4	2.20	5.9
Service	39.53	100.0	22.47	56.8	17.06	43.2	3.35	8.5	0.87	2.2	4.97	12.6	5.43	13.7	2.44	6.2
Industry group																
Education and health services	55.77	100.0	35.80	64.2	19.97	35.8	3.68	6.6	0.37	0.7	6.36	11.4	6.70	12.0	2.86	5.1
Educational services	57.31	100.0	37.02	64.6	20.29	35.4	3.52	6.1	0.27	0.5	6.49	11.3	7.15	12.5	2.86	5.0
Elementary and secondary schools	55.69	100.0	36.02	64.7	19.67	35.3	2.87	5.2	0.23	0.4	6.54	11.7	7.32	13.1	2.71	4.9
Junior colleges, colleges, and universities	61.69	100.0	39.73	64.4	21.96	35.6	5.31	8.6	0.37	0.6	6.34	10.3	6.68	10.8	3.25	5.3
Health care and social assistance	47.09	100.0	28.91	61.4	18.18	38.6	4.59	9.7	0.92	2.0	5.65	12.0	4.17	8.8	2.86	6.1
Hospitals	49.83	100.0	31.14	62.5	18.69	37.5	4.87	9.8	1.07	2.2	5.65	11.3	4.10	8.2	3.00	6.0
Public administration	51.54	100.0	29.54	57.3	22.00	42.7	4.86	9.4	0.81	1.6	6.20	12.0	7.02	13.6	3.11	6.0

Footnotes

(1) Includes costs for wages and salaries and benefits.

(2) Includes postsecondary teachers; primary, secondary, and special education teachers; and other teachers and instructors.

Table 4. Employer Costs for Employee Compensation for private industry workers by occupational and industry group
[Dec. 2020]

Series	Total compensation ⁽¹⁾		Wages and salaries		Total benefits		Paid leave		Supplemental pay		Insurance		Retirement and savings		Legally required benefits	
	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent
Private industry workers	36.23	100.0	25.48	70.3	10.74	29.7	2.69	7.4	1.25	3.5	2.81	7.8	1.25	3.4	2.75	7.6
Occupational group																
Management, professional, and related	61.72	100.0	42.95	69.6	18.77	30.4	5.76	9.3	2.28	3.7	4.41	7.1	2.30	3.7	4.03	6.5
Management, business, and financial	72.15	100.0	50.07	69.4	22.09	30.6	6.98	9.7	3.29	4.6	4.70	6.5	2.63	3.6	4.49	6.2
Professional and related	55.73	100.0	38.87	69.7	16.86	30.3	5.06	9.1	1.69	3.0	4.24	7.6	2.11	3.8	3.76	6.8
Sales and office	27.56	100.0	19.87	72.1	7.69	27.9	1.79	6.5	0.79	2.9	2.34	8.5	0.71	2.6	2.05	7.4
Sales and related	27.31	100.0	20.78	76.1	6.53	23.9	1.54	5.6	0.81	3.0	1.53	5.6	0.57	2.1	2.08	7.6
Office and administrative support	27.74	100.0	19.18	69.1	8.56	30.9	1.97	7.1	0.78	2.8	2.96	10.7	0.82	3.0	2.03	7.3
Service	17.88	100.0	13.70	76.6	4.18	23.4	0.76	4.3	0.38	2.1	1.12	6.2	0.26	1.5	1.66	9.3

Footnotes

(1) Includes costs for wages and salaries and benefits.

(2) Includes mining, construction, and manufacturing. The agriculture, forestry, farming, and hunting sector is excluded.

(3) Includes utilities; wholesale trade; retail trade; transportation and warehousing; information; finance and insurance; real estate and rental and leasing; professional and technical services; management of companies and enterprises; administrative and waste services; educational services; health care and social assistance; arts, entertainment and recreation; accommodation and food services; and other services, except public administration.

Series	Total compensation ⁽¹⁾		Wages and salaries		Total benefits		Paid leave		Supplemental pay		Insurance		Retirement and savings		Legally required benefits	
	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent
Natural resources, construction, and maintenance	38.43	100.0	26.06	67.8	12.37	32.2	2.07	5.4	1.42	3.7	3.17	8.2	2.12	5.5	3.60	9.4
Construction, extraction, farming, fishing, and forestry	39.50	100.0	26.42	66.9	13.09	33.1	1.67	4.2	1.52	3.8	3.27	8.3	2.71	6.9	3.92	9.9
Installation, maintenance, and repair	37.24	100.0	25.66	68.9	11.58	31.1	2.52	6.8	1.32	3.5	3.05	8.2	1.46	3.9	3.23	8.7
Production, transportation, and material moving	30.25	100.0	20.28	67.1	9.96	32.9	1.85	6.1	1.32	4.4	2.98	9.8	1.14	3.8	2.67	8.8
Production	28.58	100.0	19.12	66.9	9.46	33.1	1.75	6.1	1.43	5.0	3.04	10.6	0.83	2.9	2.42	8.5
Transportation and material moving	31.76	100.0	21.35	67.2	10.41	32.8	1.95	6.1	1.22	3.8	2.92	9.2	1.43	4.5	2.90	9.1
Industry group																
Goods-producing ⁽²⁾	40.32	100.0	27.22	67.5	13.09	32.5	2.61	6.5	1.75	4.3	3.61	8.9	1.80	4.5	3.33	8.3
Construction	40.61	100.0	28.29	69.7	12.32	30.3	1.85	4.6	1.44	3.5	3.06	7.5	2.12	5.2	3.86	9.5
Manufacturing	40.02	100.0	26.56	66.4	13.46	33.6	3.03	7.6	1.89	4.7	3.91	9.8	1.61	4.0	3.01	7.5
Aircraft manufacturing	75.58	100.0	47.07	62.3	28.51	37.7	7.19	9.5	4.01	5.3	7.29	9.6	5.19	6.9	4.82	6.4
Service-providing ⁽³⁾	35.39	100.0	25.13	71.0	10.27	29.0	2.70	7.6	1.15	3.2	2.65	7.5	1.13	3.2	2.63	7.4
Trade, transportation, and utilities	30.66	100.0	21.72	70.8	8.94	29.2	2.02	6.6	0.94	3.1	2.38	7.8	1.14	3.7	2.46	8.0
Wholesale trade	41.21	100.0	29.18	70.8	12.02	29.2	3.19	7.8	1.50	3.6	2.97	7.2	1.32	3.2	3.04	7.4
Retail trade	21.65	100.0	16.45	76.0	5.20	24.0	1.09	5.0	0.53	2.5	1.34	6.2	0.42	1.9	1.83	8.4
Transportation and warehousing	40.24	100.0	26.45	65.7	13.78	34.3	2.94	7.3	1.35	3.4	4.00	9.9	2.21	5.5	3.28	8.2
Utilities	67.62	100.0	41.64	61.6	25.98	38.4	5.99	8.9	2.27	3.4	6.31	9.3	6.64	9.8	4.77	7.0
Information	56.03	100.0	37.13	66.3	18.90	33.7	5.10	9.1	2.88	5.1	4.89	8.7	2.37	4.2	3.66	6.5
Financial activities	50.85	100.0	33.93	66.7	16.92	33.3	4.53	8.9	3.01	5.9	4.42	8.7	1.75	3.4	3.21	6.3
Financial and insurance	56.47	100.0	37.25	66.0	19.22	34.0	5.18	9.2	3.65	6.5	4.89	8.7	2.09	3.7	3.41	6.0
Credit intermediation and related activities	51.16	100.0	33.95	66.4	17.21	33.6	4.74	9.3	2.88	5.6	4.70	9.2	1.76	3.4	3.13	6.1
Insurance carriers and related activities	51.36	100.0	33.88	66.0	17.48	34.0	4.56	8.9	2.79	5.4	4.76	9.3	2.09	4.1	3.27	6.4
Real estate and rental and leasing	32.67	100.0	23.18	70.9	9.50	29.1	2.45	7.5	0.93	2.8	2.91	8.9	0.65	2.0	2.56	7.8
Professional and business services	44.39	100.0	31.94	72.0	12.45	28.0	3.59	8.1	1.54	3.5	2.86	6.4	1.28	2.9	3.18	7.2
Professional and technical services	58.74	100.0	42.06	71.6	16.68	28.4	5.21	8.9	1.95	3.3	3.79	6.5	1.80	3.1	3.93	6.7

Footnotes

⁽¹⁾Includes costs for wages and salaries and benefits.

⁽²⁾Includes mining, construction, and manufacturing. The agriculture, forestry, farming, and hunting sector is excluded.

⁽³⁾Includes utilities; wholesale trade; retail trade; transportation and warehousing; information; finance and insurance; real estate and rental and leasing; professional and technical services; management of companies and enterprises; administrative and waste services; educational services; health care and social assistance; arts, entertainment and recreation; accommodation and food services; and other services, except public administration.

Series	Total compensation ⁽¹⁾		Wages and salaries		Total benefits		Paid leave		Supplemental pay		Insurance		Retirement and savings		Legally required benefits	
	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent
Administrative and waste services	24.05	100.0	18.27	75.9	5.79	24.1	1.19	5.0	0.63	2.6	1.42	5.9	0.37	1.5	2.17	9.0
Education and health services	37.55	100.0	26.45	70.5	11.10	29.5	3.23	8.6	0.82	2.2	3.16	8.4	1.20	3.2	2.67	7.1
Educational services	49.17	100.0	35.49	72.2	13.68	27.8	3.81	7.7	0.33	0.7	3.96	8.1	2.24	4.6	3.34	6.8
Junior colleges, colleges, universities and professional schools	60.85	100.0	42.45	69.8	18.40	30.2	5.46	9.0	0.44	0.7	5.43	8.9	3.25	5.3	3.83	6.3
Health care and social assistance	36.00	100.0	25.25	70.1	10.75	29.9	3.16	8.8	0.89	2.5	3.06	8.5	1.07	3.0	2.59	7.2
Leisure and hospitality	15.46	100.0	12.46	80.6	3.00	19.4	0.44	2.8	0.22	1.4	0.66	4.2	0.14	0.9	1.54	10.0
Accommodation and food services	14.84	100.0	11.96	80.6	2.88	19.4	0.39	2.6	0.22	1.5	0.63	4.3	0.14	0.9	1.50	10.1
Other services	29.54	100.0	21.97	74.4	7.57	25.6	1.87	6.3	0.50	1.7	1.76	5.9	1.03	3.5	2.40	8.1

Footnotes

(1) Includes costs for wages and salaries and benefits.

(2) Includes mining, construction, and manufacturing. The agriculture, forestry, farming, and hunting sector is excluded.

(3) Includes utilities; wholesale trade; retail trade; transportation and warehousing; information; finance and insurance; real estate and rental and leasing; professional and technical services; management of companies and enterprises; administrative and waste services; educational services; health care and social assistance; arts, entertainment and recreation; accommodation and food services; and other services, except public administration.

Table 5. Employer Costs for Employee Compensation for private industry workers by bargaining and work status

[Dec. 2020]

Series	Total compensation ⁽¹⁾		Wages and salaries		Total benefits		Paid leave		Supplemental pay		Insurance		Retirement and savings		Legally required benefits	
	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent
Union																
All workers	50.90	100.0	30.25	59.4	20.65	40.6	3.64	7.1	1.86	3.6	6.99	13.7	4.41	8.7	3.75	7.4
Goods-producing ⁽²⁾	53.19	100.0	30.40	57.2	22.79	42.8	2.91	5.5	2.47	4.6	7.64	14.4	5.53	10.4	4.24	8.0
Service-providing ⁽³⁾	49.85	100.0	30.18	60.5	19.68	39.5	3.97	8.0	1.58	3.2	6.70	13.4	3.90	7.8	3.53	7.1
Nonunion																
All workers	34.99	100.0	25.08	71.7	9.91	28.3	2.61	7.5	1.20	3.4	2.46	7.0	0.98	2.8	2.66	7.6
Goods-producing ⁽²⁾	38.16	100.0	26.69	69.9	11.47	30.1	2.56	6.7	1.63	4.3	2.93	7.7	1.17	3.1	3.18	8.3
Service-providing ⁽³⁾	34.40	100.0	24.78	72.0	9.62	28.0	2.62	7.6	1.12	3.3	2.38	6.9	0.94	2.7	2.57	7.5
Full-time																
All workers	42.02	100.0	28.99	69.0	13.03	31.0	3.36	8.0	1.56	3.7	3.50	8.3	1.56	3.7	3.05	7.3
Occupational group																

Footnotes

(1) Includes costs for wages and salaries and benefits.

(2) Includes mining, construction, and manufacturing. The agriculture, forestry, farming, and hunting sector is excluded.

(3) Includes utilities; wholesale trade; retail trade; transportation and warehousing; information; finance and insurance; real estate and rental and leasing; professional and technical services; management of companies and enterprises; administrative and waste services; educational services; health care and social assistance; arts, entertainment and recreation; accommodation and food services; and other services, except public administration.

Series	Total compensation ⁽¹⁾		Wages and salaries		Total benefits		Paid leave		Supplemental pay		Insurance		Retirement and savings		Legally required benefits	
	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent
Management, professional and related	64.20	100.0	44.36	69.1	19.84	30.9	6.11	9.5	2.44	3.8	4.73	7.4	2.45	3.8	4.12	6.4
Management, business, and financial	73.19	100.0	50.70	69.3	22.50	30.7	7.13	9.7	3.35	4.6	4.80	6.6	2.69	3.7	4.53	6.2
Professional and related	58.25	100.0	40.16	68.9	18.09	31.1	5.43	9.3	1.84	3.2	4.68	8.0	2.29	3.9	3.84	6.6
Sales and office	32.20	100.0	22.63	70.3	9.57	29.7	2.34	7.3	1.02	3.2	3.00	9.3	0.92	2.9	2.28	7.1
Sales and related	36.91	100.0	27.28	73.9	9.63	26.1	2.51	6.8	1.25	3.4	2.38	6.4	0.90	2.4	2.59	7.0
Office and administrative support	29.74	100.0	20.20	67.9	9.54	32.1	2.26	7.6	0.90	3.0	3.33	11.2	0.93	3.1	2.12	7.1
Service	21.68	100.0	15.70	72.4	5.98	27.6	1.24	5.7	0.60	2.7	1.89	8.7	0.43	2.0	1.82	8.4
Natural resources, construction, and maintenance	39.03	100.0	26.36	67.6	12.66	32.4	2.14	5.5	1.46	3.7	3.25	8.3	2.19	5.6	3.63	9.3
Construction, extraction, farming, fishing, and forestry	39.87	100.0	26.61	66.7	13.26	33.3	1.71	4.3	1.54	3.9	3.30	8.3	2.76	6.9	3.94	9.9
Installation, maintenance, and repair	38.08	100.0	26.09	68.5	11.99	31.5	2.62	6.9	1.37	3.6	3.20	8.4	1.53	4.0	3.27	8.6
Production, transportation, and material moving	32.29	100.0	21.36	66.2	10.92	33.8	2.12	6.6	1.47	4.6	3.33	10.3	1.27	3.9	2.74	8.5
Production	29.65	100.0	19.64	66.2	10.01	33.8	1.87	6.3	1.53	5.2	3.26	11.0	0.89	3.0	2.47	8.3
Transportation and material moving	35.24	100.0	23.29	66.1	11.95	33.9	2.40	6.8	1.41	4.0	3.40	9.7	1.70	4.8	3.04	8.6
Industry group																
Goods-producing ⁽²⁾	40.77	100.0	27.47	67.4	13.30	32.6	2.67	6.5	1.78	4.4	3.67	9.0	1.83	4.5	3.35	8.2
Construction	41.14	100.0	28.55	69.4	12.59	30.6	1.90	4.6	1.48	3.6	3.15	7.7	2.18	5.3	3.88	9.4
Manufacturing	40.43	100.0	26.80	66.3	13.63	33.7	3.09	7.6	1.91	4.7	3.96	9.8	1.63	4.0	3.03	7.5
Service-providing ⁽³⁾	42.37	100.0	29.42	69.4	12.95	30.6	3.55	8.4	1.49	3.5	3.45	8.1	1.48	3.5	2.97	7.0
Trade, transportation, and utilities	37.35	100.0	25.81	69.1	11.54	30.9	2.80	7.5	1.26	3.4	3.11	8.3	1.53	4.1	2.84	7.6
Information	61.32	100.0	40.37	65.8	20.96	34.2	5.64	9.2	3.26	5.3	5.44	8.9	2.67	4.4	3.94	6.4
Financial activities	52.85	100.0	35.10	66.4	17.76	33.6	4.78	9.1	3.18	6.0	4.65	8.8	1.85	3.5	3.30	6.2
Professional and business services	49.02	100.0	34.93	71.3	14.09	28.7	4.15	8.5	1.75	3.6	3.30	6.7	1.50	3.1	3.39	6.9
Education and health services	40.42	100.0	27.88	69.0	12.54	31.0	3.71	9.2	0.88	2.2	3.79	9.4	1.39	3.4	2.76	6.8

Footnotes⁽¹⁾Includes costs for wages and salaries and benefits.⁽²⁾Includes mining, construction, and manufacturing. The agriculture, forestry, farming, and hunting sector is excluded.⁽³⁾Includes utilities; wholesale trade; retail trade; transportation and warehousing; information; finance and insurance; real estate and rental and leasing; professional and technical services; management of companies and enterprises; administrative and waste services; educational services; health care and social assistance; arts, entertainment and recreation; accommodation and food services; and other services, except public administration.

Series	Total compensation ⁽¹⁾		Wages and salaries		Total benefits		Paid leave		Supplemental pay		Insurance		Retirement and savings		Legally required benefits	
	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent
Leisure and hospitality	21.15	100.0	16.09	76.0	5.07	24.0	1.04	4.9	0.47	2.2	1.40	6.6	0.32	1.5	1.84	8.7
Other services	34.56	100.0	24.85	71.9	9.71	28.1	2.54	7.3	0.65	1.9	2.42	7.0	1.45	4.2	2.64	7.7
Part-time																
All workers	19.16	100.0	15.14	79.0	4.02	21.0	0.71	3.7	0.35	1.8	0.80	4.2	0.32	1.6	1.84	9.6
Occupational group																
Management, professional and related	41.40	100.0	31.43	75.9	9.97	24.1	2.91	7.0	0.93	2.2	1.78	4.3	1.05	2.5	3.30	8.0
Professional and related	42.07	100.0	31.84	75.7	10.23	24.3	3.05	7.2	0.89	2.1	1.85	4.4	1.10	2.6	3.34	7.9
Sales and office	16.91	100.0	13.53	80.0	3.38	20.0	0.51	3.0	0.27	1.6	0.83	4.9	0.25	1.5	1.53	9.0
Sales and related	15.22	100.0	12.60	82.8	2.62	17.2	0.33	2.1	0.24	1.6	0.45	3.0	0.16	1.0	1.44	9.5
Office and administrative support	19.73	100.0	15.08	76.4	4.65	23.6	0.82	4.1	0.31	1.6	1.45	7.3	0.40	2.0	1.67	8.5
Service	14.36	100.0	11.84	82.5	2.52	17.5	0.31	2.2	0.18	1.3	0.40	2.8	0.11	0.8	1.51	10.5
Production, transportation, and material moving	20.32	100.0	15.05	74.0	5.28	26.0	0.57	2.8	0.59	2.9	1.27	6.2	0.52	2.5	2.33	11.5
Transportation and material moving	21.46	100.0	15.59	72.6	5.87	27.4	0.61	2.9	0.67	3.1	1.48	6.9	0.63	2.9	2.48	11.5
Industry group																
Service-providing ⁽³⁾	19.06	100.0	15.08	79.1	3.98	20.9	0.72	3.8	0.34	1.8	0.79	4.1	0.31	1.6	1.82	9.6
Trade, transportation, and utilities	17.81	100.0	13.85	77.8	3.95	22.2	0.52	2.9	0.33	1.9	0.99	5.5	0.39	2.2	1.72	9.7
Professional and business services	20.21	100.0	16.33	80.8	3.89	19.2	0.66	3.2	0.47	2.3	0.54	2.7	0.13	0.6	2.10	10.4
Education and health services	29.38	100.0	22.39	76.2	6.99	23.8	1.88	6.4	0.64	2.2	1.36	4.6	0.67	2.3	2.44	8.3
Leisure and hospitality	12.66	100.0	10.68	84.3	1.99	15.7	0.15	1.2	0.10	0.8	0.29	2.3	0.06	0.5	1.39	11.0

Footnotes

(1) Includes costs for wages and salaries and benefits.

(2) Includes mining, construction, and manufacturing. The agriculture, forestry, farming, and hunting sector is excluded.

(3) Includes utilities; wholesale trade; retail trade; transportation and warehousing; information; finance and insurance; real estate and rental and leasing; professional and technical services; management of companies and enterprises; administrative and waste services; educational services; health care and social assistance; arts, entertainment and recreation; accommodation and food services; and other services, except public administration.

Table 6. Employer Costs for Employee Compensation for private industry workers by establishment size and industry group
[Dec. 2020]

Series	Total compensation ⁽¹⁾		Wages and salaries		Total benefits		Paid leave		Supplemental pay		Insurance		Retirement and savings		Legally required benefits	
	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent
All workers																

Footnotes

(1) Includes costs for wages and salaries and benefits.

(2) Includes mining, construction, and manufacturing. The agriculture, forestry, farming, and hunting sector is excluded.

(3) Includes utilities; wholesale trade; retail trade; transportation and warehousing; information; finance and insurance; real estate and rental and leasing; professional and technical services; management of companies and enterprises; administrative and waste services; educational services; health care and social assistance; arts, entertainment and recreation; accommodation and food services; and other services, except public administration.

Series	Total compensation ⁽¹⁾		Wages and salaries		Total benefits		Paid leave		Supplemental pay		Insurance		Retirement and savings		Legally required benefits	
	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent
1-99 workers	29.99	100.0	22.21	74.0	7.78	26.0	1.88	6.3	0.75	2.5	1.95	6.5	0.74	2.5	2.46	8.2
1-49 workers	29.05	100.0	21.75	74.9	7.31	25.1	1.77	6.1	0.71	2.4	1.77	6.1	0.64	2.2	2.42	8.3
50-99 workers	33.46	100.0	23.92	71.5	9.55	28.5	2.31	6.9	0.91	2.7	2.63	7.9	1.08	3.2	2.62	7.8
100 workers or more	44.23	100.0	29.68	67.1	14.55	32.9	3.72	8.4	1.89	4.3	3.92	8.9	1.90	4.3	3.11	7.0
100-499 workers	37.14	100.0	25.80	69.5	11.34	30.5	2.85	7.7	1.28	3.4	3.13	8.4	1.29	3.5	2.80	7.5
500 workers or more	53.83	100.0	34.94	64.9	18.88	35.1	4.91	9.1	2.73	5.1	4.99	9.3	2.72	5.1	3.54	6.6
Goods-producing⁽²⁾																
1-99 workers	34.82	100.0	24.68	70.9	10.13	29.1	1.78	5.1	1.21	3.5	2.64	7.6	1.33	3.8	3.18	9.1
1-49 workers	33.00	100.0	23.74	71.9	9.26	28.1	1.62	4.9	1.07	3.3	2.28	6.9	1.14	3.4	3.15	9.6
50-99 workers	39.80	100.0	27.27	68.5	12.52	31.5	2.21	5.6	1.59	4.0	3.62	9.1	1.84	4.6	3.26	8.2
100 workers or more	45.51	100.0	29.62	65.1	15.89	34.9	3.40	7.5	2.26	5.0	4.52	9.9	2.24	4.9	3.47	7.6
100-499 workers	42.38	100.0	28.11	66.3	14.27	33.7	2.93	6.9	1.89	4.5	4.09	9.6	1.95	4.6	3.41	8.0
500 workers or more	50.61	100.0	32.07	63.4	18.53	36.6	4.16	8.2	2.86	5.6	5.24	10.3	2.71	5.4	3.57	7.1
Service-providing⁽³⁾																
1-99 workers	29.17	100.0	21.79	74.7	7.38	25.3	1.90	6.5	0.67	2.3	1.84	6.3	0.64	2.2	2.34	8.0
1-49 workers	28.43	100.0	21.43	75.4	7.00	24.6	1.79	6.3	0.65	2.3	1.69	5.9	0.57	2.0	2.30	8.1
50-99 workers	32.04	100.0	23.16	72.3	8.88	27.7	2.33	7.3	0.76	2.4	2.41	7.5	0.90	2.8	2.47	7.7
100 workers or more	43.91	100.0	29.70	67.6	14.21	32.4	3.80	8.7	1.80	4.1	3.77	8.6	1.81	4.1	3.02	6.9
100-499 workers	35.71	100.0	25.16	70.5	10.54	29.5	2.82	7.9	1.11	3.1	2.87	8.0	1.11	3.1	2.63	7.4
500 workers or more	54.52	100.0	35.57	65.2	18.96	34.8	5.08	9.3	2.70	5.0	4.93	9.0	2.72	5.0	3.53	6.5

Footnotes

(1) Includes costs for wages and salaries and benefits.

(2) Includes mining, construction, and manufacturing. The agriculture, forestry, farming, and hunting sector is excluded.

(3) Includes utilities; wholesale trade; retail trade; transportation and warehousing; information; finance and insurance; real estate and rental and leasing; professional and technical services; management of companies and enterprises; administrative and waste services; educational services; health care and social assistance; arts, entertainment and recreation; accommodation and food services; and other services, except public administration.

Table 7. Employer Costs for Employee Compensation for private industry workers by census region and division

(Dec. 2020)

Area ⁽¹⁾	Total compensation ⁽²⁾		Wages and salaries		Total benefits		Paid leave		Supplemental pay		Insurance		Retirement and savings		Legally required benefits	
	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent

Footnotes

(1) The census divisions are defined as follows: New England: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont; Middle Atlantic: New Jersey, New York, and Pennsylvania; South Atlantic: Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, and West Virginia; East South Central: Alabama, Kentucky, Mississippi, and Tennessee; West South Central: Arkansas, Louisiana, Oklahoma, and Texas; East North Central: Illinois, Indiana, Michigan, Ohio, and Wisconsin; West North Central: Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota; Mountain: Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming; and Pacific: Alaska, California, Hawaii, Oregon, and Washington.

(2) Includes costs for wages and salaries and benefits.

Area(1)	Total compensation(2)		Wages and salaries		Total benefits		Paid leave		Supplemental pay		Insurance		Retirement and savings		Legally required benefits	
	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent	Cost (\$)	Percent
Northeast	40.62	100.0	27.89	68.7	12.72	31.3	3.20	7.9	1.48	3.6	3.35	8.3	1.56	3.8	3.14	7.7
New England	40.63	100.0	28.23	69.5	12.40	30.5	3.29	8.1	1.26	3.1	3.26	8.0	1.49	3.7	3.10	7.6
Middle Atlantic	40.61	100.0	27.77	68.4	12.84	31.6	3.16	7.8	1.55	3.8	3.39	8.3	1.59	3.9	3.15	7.8
South	32.34	100.0	23.39	72.3	8.95	27.7	2.32	7.2	1.08	3.3	2.18	6.7	0.98	3.0	2.39	7.4
South Atlantic	34.00	100.0	24.53	72.1	9.47	27.9	2.54	7.5	1.05	3.1	2.28	6.7	1.07	3.2	2.53	7.4
East South Central	29.55	100.0	21.30	72.1	8.25	27.9	2.08	7.0	0.85	2.9	2.20	7.5	0.96	3.3	2.16	7.3
West South Central	30.68	100.0	22.35	72.8	8.34	27.2	2.03	6.6	1.25	4.1	1.97	6.4	0.83	2.7	2.26	7.4
Midwest	34.76	100.0	24.01	69.1	10.75	30.9	2.50	7.2	1.30	3.7	3.05	8.8	1.31	3.8	2.59	7.5
East North Central	35.70	100.0	24.63	69.0	11.07	31.0	2.56	7.2	1.38	3.9	3.05	8.6	1.45	4.1	2.64	7.4
West North Central	32.82	100.0	22.73	69.3	10.08	30.7	2.39	7.3	1.13	3.5	3.03	9.2	1.03	3.2	2.50	7.6
West	40.19	100.0	28.28	70.4	11.91	29.6	3.04	7.6	1.28	3.2	3.12	7.8	1.33	3.3	3.14	7.8
Mountain	33.80	100.0	23.61	69.8	10.19	30.2	2.38	7.0	1.25	3.7	2.85	8.4	1.16	3.4	2.55	7.5
Pacific	42.81	100.0	30.19	70.5	12.62	29.5	3.31	7.7	1.29	3.0	3.24	7.6	1.40	3.3	3.38	7.9

Footnotes

(1) The census divisions are defined as follows: New England: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont; Middle Atlantic: New Jersey, New York, and Pennsylvania; South Atlantic: Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, and West Virginia; East South Central: Alabama, Kentucky, Mississippi, and Tennessee; West South Central: Arkansas, Louisiana, Oklahoma, and Texas; East North Central: Illinois, Indiana, Michigan, Ohio, and Wisconsin; West North Central: Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota; Mountain: Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming; and Pacific: Alaska, California, Hawaii, Oregon, and Washington.

(2) Includes costs for wages and salaries and benefits.

Last Modified Date: March 18, 2021

U.S. BUREAU OF LABOR STATISTICS Office of Compensation and Working Conditions PSB Suite 4160 2 Massachusetts Avenue NE
Washington, DC 20212-0001

Telephone: 1-202-691-6199 www.bls.gov/ECT [Contact ECT](#)

2018 W-2 and EARNINGS SUMMARY

Employee Reference Copy	
W-2 Wage and Tax Statement 2018	
OMB No. 1545-0048	
d Control number 0000042992 TJA	Dept. RI17
Employer use only A 10411	
e Employer's name, address, and ZIP code WORKFORCE LOGIC LLC 420 SOUTH ORANGE AVE SUITE 600 ORLANDO, FL 32801	
e/f Employee's name, address, and ZIP code CHARLES D TOWNSLEY AUSTIN, TX 78702	
b Employer's FED ID number	a Employer's SSA number
1 Wages, tips, other comp. 50328.00	2 Federal income tax withheld 9794.70
3 Social security wages 50328.00	4 Social security tax withheld 3120.34
5 Medicare wages and tips 50328.00	6 Medicare tax withheld 729.76
7 Social security tips	8 Allocated tips
9	10 Dependent care benefits
11 Nonqualified plans	12a See instructions for box 12
14 Other	12b
	12c
	12d
15 State Employer's state ID no.	16 State wages, tips, etc.
17 State income tax	18 Local wages, tips, etc.
19 Local income tax	20 Locality name

EXHIBITsg 5
Ranchin 5-12-22

The wages, tips, and other compensation reflected in box 1 are the sum of those wages shown on your last pay statement, plus any additional compensation or adjustments received after the payroll close.

Your gross pay may not match your box 1 totals due to adjustments made for GTL, 401(k), cafeteria plans, etc...

To change your employee W-4 profile information, file a new W-4 with your payroll department.

CHARLES D TOWNSLEY
AUSTIN, TX 78702

Social Security Number: [REDACTED]
Taxable Marital Status: SINGLE
Exemptions/Allowances:
Federal: 0
State: 0
Local: 0

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1 Wages, tips, other comp. 50328.00	2 Federal income tax withheld 9794.70
3 Social security wages 50328.00	4 Social security tax withheld 3120.34
5 Medicare wages and tips 50328.00	6 Medicare tax withheld 729.76
d Control number 0000042992 TJA	Dept. RI17
Corp. A Employer use only 10411	
e Employer's name, address, and ZIP code WORKFORCE LOGIC LLC 420 SOUTH ORANGE AVE SUITE 600 ORLANDO, FL 32801	
b Employer's FED ID number	a Employer's SSA number
7 Social security tips	8 Allocated tips
9	10 Dependent care benefits
11 Nonqualified plans	12a See instructions for box 12
14 Other	12b
	12c
	12d
13 Stat emp	Rel. plan 3rd party sick pay
e/f Employee's name, address and ZIP code CHARLES D TOWNSLEY AUSTIN, TX 78702	
15 State Employer's state ID no.	16 State wages, tips, etc.
17 State income tax	18 Local wages, tips, etc.
19 Local income tax	20 Locality name
Federal Filing Copy W-2 Wage and Tax Statement 2018 OMB No. 1545-0048 Copy B to be filed with employee's Federal Income Tax Return.	

1 Wages, tips, other comp. 50328.00	2 Federal income tax withheld 9794.70
3 Social security wages 50328.00	4 Social security tax withheld 3120.34
5 Medicare wages and tips 50328.00	6 Medicare tax withheld 729.76
d Control number 0000042992 TJA	Dept. RI17
Corp. A Employer use only 10411	
e Employer's name, address, and ZIP code WORKFORCE LOGIC LLC 420 SOUTH ORANGE AVE SUITE 600 ORLANDO, FL 32801	
b Employer's FED ID number	a Employer's SSA number
7 Social security tips	8 Allocated tips
9	10 Dependent care benefits
11 Nonqualified plans	12a
14 Other	12b
	12c
	12d
13 Stat emp	Rel. plan 3rd party sick pay
e/f Employee's name, address and ZIP code CHARLES D TOWNSLEY AUSTIN, TX 78702	
15 State Employer's state ID no.	16 State wages, tips, etc.
17 State income tax	18 Local wages, tips, etc.
19 Local income tax	20 Locality name
State Filing Copy W-2 Wage and Tax Statement 2018 OMB No. 1545-0048 Copy 2 to be filed with employee's State Income Tax Return.	

1 Wages, tips, other comp. 50328.00	2 Federal income tax withheld 9794.70
3 Social security wages 50328.00	4 Social security tax withheld 3120.34
5 Medicare wages and tips 50328.00	6 Medicare tax withheld 729.76
d Control number 0000042992 TJA	Dept. RI17
Corp. A Employer use only 10411	
e Employer's name, address, and ZIP code WORKFORCE LOGIC LLC 420 SOUTH ORANGE AVE SUITE 600 ORLANDO, FL 32801	
b Employer's FED ID number	a Employer's SSA number
7 Social security tips	8 Allocated tips
9	10 Dependent care benefits
11 Nonqualified plans	12a
14 Other	12b
	12c
	12d
13 Stat emp	Rel. plan 3rd party sick pay
e/f Employee's name, address and ZIP code CHARLES D TOWNSLEY AUSTIN, TX 78702	
15 State Employer's state ID no.	16 State wages, tips, etc.
17 State income tax	18 Local wages, tips, etc.
19 Local income tax	20 Locality name
City or Local Filing Copy W-2 Wage and Tax Statement 2018 OMB No. 1545-0048 Copy 2 to be filed with employee's City or Local Income Tax Return.	

Townsley 0406



EXHIBIT

sg

Rzmbin

5-2-22

January 25, 2021

Titon Hogue

Elgin, TX 78621

Dear Titon:

Congratulations on your position as **Associate Vice President, Solutions Delivery & Business Intelligence**, for Austin Community College District effective **February 1, 2021**. This is a temporary employment position for a period of one (1) year. We anticipate your services will be needed through January 31, 2022. As with all ACC staff employees, your employment is at-will. This means that while we hope your employment will be mutually satisfying and rewarding, both you and the organization are free to end your employment at any time, with or without notice or cause, prior to the end of the temporary period of employment.

This employment offer is contingent on your ability to pass a background check, reference checks, and verify your eligibility to work in the United States. See note below about submitting your documents remotely. Attached is a list of acceptable documents. In addition, you have a period of six (6) months to complete the required Bachelor's degree that is required for the position.

SALARY INFORMATION

Your salary information is based upon ACC's FY21 salary scale and is computed based upon information provided in your application and resume.

Below you will find your salary information:

Start Date:	February 1, 2021
Annual Rate:	\$170,000
Band/Level/Pay Range:	ADM/999
FLSA Status:	Exempt
Job Classification:	Administrator

Employees normally receive pay at the end of each month.

NEW EMPLOYEE ORIENTATION

You are required to attend orientation. New employee orientation is your official first day of employment. At orientation you will receive important information about hiring paperwork, policies and procedures and obtain an official welcome to the college. Arrangements will be made for new employees to present I-9 documents remotely. All employees will be required to re-present their documents in person with an HR representative when the College reopens.

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EXHIBIT

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Form **1040-SR** Department of the Treasury—Internal Revenue Service (99) **2019** U.S. Tax Return for Seniors OMB No. 1545-0074 IRS Use Only— *sg* *Rabin* *5-12-22*

Filing Status ☒ Single ☐ Married filing jointly ☐ Married filing separately (MFS)
☐ Head of household (HOH) ☐ Qualifying widow(er) (QW)
 Check only one box. If you checked the MFS box, enter the name of spouse. If you checked the HOH or QW box, enter the child's name if the qualifying person is a child but not your dependent. ▶

Your first name and middle initial Michael	Last name Sauro	Your social security number [REDACTED]
If joint return, spouse's first name and middle initial	Last name	Spouse's social security number
Home address (number and street). If you have a P.O. box, see instructions. [REDACTED]		Apt. no. [REDACTED]
City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions). Austin TX 78704-4261		Presidential Election Campaign Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund. <input type="checkbox"/> You <input type="checkbox"/> Spouse
Foreign country name	Foreign province/state/county	Foreign postal code
If more than four dependents, see inst. and ✓ here ▶ <input type="checkbox"/>		

Standard Deduction **Someone can claim:** ☐ You as a dependent ☐ Your spouse as a dependent
☐ Spouse itemizes on a separate return or you were a dual-status alien

Age/Blindness **You:** ☒ Were born before January 2, 1955 ☐ Are blind
Spouse: ☐ Was born before January 2, 1955 ☐ Is blind

Dependents (see instructions):		(2) Social security number	(3) Relationship to you	(4) ✓ if qualifies for (see inst.):	
(1) First name	Last name			Child tax credit	Credit for other dependents
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>

Attach Schedule B if required.	1 Wages, salaries, tips, etc. Attach Form(s) W-2	1	3,323.
	2a Tax-exempt interest	2a	0.
	3a Qualified dividends	3a	1,145.
	4a IRA distributions	4a	
	c Pensions and annuities	4c	
	5a Social security benefits	5a	
	6 Capital gain or (loss). Attach Schedule D if required. If not required, check here . ▶ <input type="checkbox"/>	6	7,004.
	7a Other income from Schedule 1, line 9	7a	
	b Add lines 1, 2b, 3b, 4b, 4d, 5b, 6, and 7a. This is your total income ▶	7b	99,245.
	8a Adjustments to income from Schedule 1, line 22	8a	3,000.
	b Subtract line 8a from line 7b. This is your adjusted gross income ▶	8b	96,245.
Standard Deduction See Standard Deduction Chart below.	9 Standard deduction or itemized deductions (from Schedule A)	9	27,788.
	10 Qualified business income deduction. Attach Form 8995 or Form 8995-A	10	11.
	11a Add lines 9 and 10	11a	27,799.
	b Taxable income. Subtract line 11a from line 8b. If zero or less, enter -0-	11b	68,446.

Standard Deduction Chart* Add the number of boxes checked in the "Age/Blindness" section of *Standard Deduction* . . . ▶

IF your filing status is . . .	AND the number of boxes checked is . . .	THEN your standard deduction is . . .	IF your filing status is . . .	AND the number of boxes checked is . . .	THEN your standard deduction is . . .
Single	1	13,850	Head of household	1	20,000
	2	15,500		2	21,650
Married filing jointly	1	25,700	Married filing separately	1	13,500
or	2	27,000		2	14,800
Qualifying widow(er)	3	28,300		3	16,100
	4	29,600		4	17,400

*Don't use this chart if someone can claim you (or your spouse if filing jointly) as a dependent, your spouse itemizes on a separate return, or you were a dual-status alien. Instead, see instructions.

Sauro 0056



211 Quality Circle
College Station, TX USA
Tel: +1 979 691 7700
careers.cognizant.com

November 3, 2020

Rosa Davidson
[REDACTED]

Round Rock, Texas 78681

Re: Offer of Employment

Dear Rosa:

Cognizant Technology Solutions U.S. Corporation ('Cognizant') is pleased to extend an offer of employment, in the position of Security Architect, at Senior Manager Level. You will initially report to Booker Winrow. Cognizant reserves the right to make any changes or modifications in the future that it believes is in the best interest of the Company's business goals and needs. Your scheduled start date will be November 30, 2020. If for any reason, the first day of employment needs to be altered, it may be done so upon written agreement by both parties. Because time is of the essence, this offer will remain open only for fourteen (14) calendar days, inclusive of the date you receive this offer letter. If you do not accept this offer within that time frame, it will expire and will no longer be available for you to accept.

This offer is contingent on the following:

- Your signing and returning of this offer letter within the prescribed timeframe above;
- The successful and satisfactory completion of your references and background verification; which may include drug testing;
- Your signing of the Confidential Information and Invention Assignment Agreement (CIIAA);
- Completion of all new hire paperwork received electronically; and
- Satisfactory verification of employment eligibility and authorization to work in the United States. You will need to present documentation of identity and employment eligibility, and complete the I-9 Employment Eligibility Verification form within the first 3 business days of your employment. In compliance with the Immigration Reform and Control Act of 1986, your employment at Cognizant is contingent on presenting adequate documentation within the mandatory time frame.

Employment with Cognizant is 'at-will,' meaning that it is not for any specific period of time and can be terminated by either you or by the Company at any time, with or without advance notice, and for any or no particular reason or cause.

The terms and conditions of your employment with Cognizant are described below:

EXHIBIT

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Rambin

5-12-22

CASH COMPENSATION:

BASE SALARY: You will be paid USD 6,041.67 per pay period equivalent to an annual base salary of USD 145,000.00. You will be paid your salary on the 15th and last working day of each month in accordance with the Company's current payroll policies and practices.

TARGET BONUS: You are also eligible for a target bonus of USD 15,000.00. The bonus program is discretionary, subject to change, and based on individual and company performance. Bonuses are paid out for a calendar year and will be pro-rated if you have not spent the entire year on the Company's payroll. The bonus will be paid to you only if you are still active on the Company's payroll on the date the bonus is paid and in one single payment.

All aforementioned components of your cash compensation will be subject to customary deductions and withholdings as required by law or as authorized by you.

VACATION: You will be entitled to 12 days of personal leave, plus normal Company holidays, subject to the Company's applicable accrual and carry-over rules.

BENEFITS: As a full-time, regular employee of Cognizant, you will be eligible to receive benefits which the Company offers subject to applicable vesting periods and eligibility requirements.

COMPLIANCE WITH COMPANY POLICIES: As an employee of Cognizant, you will be expected to comply with the Company's personnel and other policies including, but not limited to, the Company's policy requiring your ongoing compliance with the CIIAA, and the Company's policies prohibiting discrimination and unlawful harassment, conflicts of interest and violation of any applicable laws in the course of performing your job duties and responsibilities. You also agree to adhere to all confidentiality obligations of any previous employer, that you will not bring any confidential information from your prior employer to Cognizant or provide such confidential information to Cognizant, and that you will not use any such confidential information for any purpose in the course of your employment at Cognizant.

OFFER ACCEPTANCE: If you accept this offer, and the conditions of this offer are satisfied, this letter and the CIIAA shall constitute the complete agreement between you and Cognizant, with respect to the terms and conditions of your employment. Any representations, promises or agreements, whether written or oral, that are not expressly written in this letter or are contrary to or conflict with this letter, which may have been made to you by any person, are expressly replaced by this letter. The terms and conditions of your employment pursuant to this letter may not be changed except as otherwise expressly specified in this letter or in the CIIAA.

We will be delighted to have you join us. If the foregoing is acceptable to you, please eSign and your electronic acceptance will be returned to the Company. Please retain a copy for your records. Please be sure to complete pre-joining documents on our Welcome Center per the instructions that will be sent to you shortly.

If you have any questions regarding the contents of this letter, employment with Cognizant or the enclosed materials, please contact your recruiter, William Ehlers at 773-814-2919 or

Sincerely,

Cognizant Technology Solutions U.S. Corp.

I HAVE READ, UNDERSTAND AND ACCEPT THE ABOVE OFFER OF EMPLOYMENT AND
AGREE TO THE TERMS AND CONDITION SET FORTH ABOVE:

Rosa Davidson

Name

Signature

Date (Month, Day, Year) or (MM/DD/YY)



February 26, 2020

Janet Gelpman

Dallas, Texas 75229

United States of America

EXHIBIT

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Rzmbin 5-12-22

It is with great pleasure that JDA Software, Inc. ("JDA"), an indirect wholly owned subsidiary of RedPrairie Holding, Inc. ("Parent", together with JDA and its affiliates, the "Company"), extends to you an offer of employment for the position of User Experience Architect (the "Position"), reporting to Joerg Beringer, Chief Design Officer. The position is located at US - Dallas.

You acknowledge and agree that you may from time to time also be assigned to similar positions as the Position within affiliated entities of the Parent and/or requested to provide services therefor and that, upon such assignment and/or request, you shall not be provided any compensation or benefits beyond that provided herein. It being acknowledged that such additional assignment(s) shall be considered duties under this offer letter. Should you accept this offer of employment, the salary for your position will be \$150,000.00 base annual salary, payable on the 15th and 30th of each month, in line with other similarly situated employees of the Company, as may be changed from time to time. All amounts payable to you under this offer letter shall be subject to applicable federal, state and local withholding requirements. Your start date with the Company will be March 9, 2020.

As an Associate working at least 30 hours per week, you will be eligible to participate in the Company's annual performance incentive bonus program at 18% of your annual salary per year beginning on your date of hire. Based on your hire date, any payments will be prorated accordingly. The funding of the bonus pool is based on achievement of the company's annual financial goals, as approved by the Board of Directors. The actual payout to associates is based on individual performance and contribution to the company in the applicable year, as determined by management. The bonus distribution is, of course, not guaranteed, and the company has the right to modify the program from time to time or cancel at its sole discretion. New hires starting after January through September 30 will be eligible for the bonus plan in the current calendar year. New hires joining Oct 1 through Dec 31 will be eligible for the bonus plan starting in the following calendar year.

Although we are confident that your employment relationship will be mutually satisfactory, your employment with the Company is "at-will". This means that your employment is not guaranteed for any specific period of time. Accordingly, either you or the Company can terminate the employment relationship at any time, with or without cause or with or without advanced notice.

As part of your onboarding process, you will be provided copies of the Company's policies and terms and conditions of employment, including the Company's Whistle-Blowing Policy, Social Media Policy, Information Security Policy, Anti-Bribery Policies and Procedures, Code of Conduct and Acceptable Use Policy (all of the foregoing documents and policies are collectively referred to herein as the "Company Policy Documents"), you will be required to review and acknowledge that you have reviewed and understand the Company Policy Documents. You will also be required to complete, execute and deliver a Confidentiality, Non-Competition and Inventions Assignment Agreement (the "Assignment Agreement"). In connection with the Assignment Agreement, you will have the opportunity to disclose any innovations, inventions or improvements relevant to the subject matter of your employment by the Company that have been conceived, developed, reduced to practice, fixed in a tangible medium of expression, or made by you alone or jointly with others prior to your employment by JDA (collectively, "Prior Inventions"), which you desire to remove from the operation of the Assignment Agreement.

This offer of employment is conditioned upon the following:

- your signing this offer letter;
- your completing a Form I-9 and providing documentation establishing both identity and eligibility to work in the United States within three (3) days of hire;
- obtaining favorable results from a criminal, educational and driving record background check, as well as favorable references,
- your reviewing and acknowledgment that you have reviewed and understand the Company Policy Documents, and
- your completion, execution and delivery of the Assignment Agreement. This offer letter (along with the Company Policy Documents and Assignment Agreement) sets forth all understandings and agreements between you and JDA regarding your employment and supersedes any prior or contemporaneous agreements or negotiations regarding the subject matter contained therein. This offer letter shall be governed by and construed in accordance with the laws of the State of Arizona without giving effect to conflicts of law principles thereof.

Gelpman 0059



We believe you will greatly contribute to the Company and its future success. Congratulations on your new opportunity!

Sincerely,

Rick Miller [C]
Agency Consultant

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	Case No. 1:20-cv-00969-DAE
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	

**DEFENDANT INTERNATIONAL BUSINESS MACHINES CORPORATION'S
MOTION TO EXCLUDE EXPERT REPORT AND TESTIMONY OF MARK RAMBIN**

EXHIBIT B to Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHARLES TOWNSLEY, MICHAEL SAURO,)
WALTER NOFFSINGER, ROSA DAVIDSON,)
MICHAEL KELLY, TITON HOQUE, THANH DO,)
)
)
Plaintiffs,)
)
)
V.)
)
INTERNATIONAL BUSINESS MACHINES)
CORPORATION)
)
Defendants.)

Case No. 1:20-cv-00969-LY

Expert Report
of
Mark Rambin, CPA, CFF
February 15, 2022

EXHIBIT

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Rambin

5-12-22

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Introduction

Qualifications

1. I am a Managing Director with Echelon Analytics (“Echelon”), a specialized consultancy that provides economic and financial analysis, forensic investigation, and expert testimony in commercial disputes and litigation. I have provided consulting services to clients involved in commercial disputes in many industries. I have prepared expert reports and have provided expert testimony in matters before state and federal courts and in arbitrations. I have practiced in this field for over thirty-five years.

2. I am a graduate of The University of Texas at Austin, receiving a Bachelor of Business Administration in Accounting in 1980. I became licensed as a Certified Public Accountant in 1983. My professional biography at [Exhibit A](#) provides additional information on my education and experience, including expert testimony over the last four years.

Scope of Retention and Compensation

3. Echelon has been retained by counsel for the Plaintiffs in this matter. I have been requested to analyze financial and economic issues related to economic damages claims asserted by the Plaintiffs against International Business Machines Corporation (“IBM”).

4. Echelon’s compensation for services provided is based on hourly rates ranging from \$200 to \$695, plus job-related expenses. My hourly rate is \$425. The firm’s compensation is not contingent on or related to the outcome of this litigation.

Information Considered

5. In performing my review and analysis to arrive at the opinions expressed herein, I have relied upon my skills, knowledge, education, experience and training, which are summarized in [Exhibit A](#). Additionally, I have considered information from a variety of sources, including information produced by parties to this dispute and information I and/or persons working under my direction obtained independently. The information I have considered through the date of this report is listed in [Exhibit B](#).

6. My work is continuing, discovery is ongoing, and I reserve the opportunity to revise and/or supplement this report based on additional information received or to respond to issues raised by the parties, their witnesses, or the Court.

7. This report is intended to be used solely in this litigation and should not be relied upon for any other purpose. If I provide deposition or trial testimony, such testimony may supplement the opinions expressed herein. I may also prepare or assist in the preparation of demonstrative exhibits related to my analysis and opinions. The exhibits and schedules accompanying this report, including all footnotes and source notations, are integral parts of this report.

Background

The Parties

8. The Plaintiffs are former employees of IBM that currently reside in the United States. Each Plaintiff is over the age of forty.

9. IBM is a NYSE publicly traded global company with a market capitalization of more than \$120 billion. Headquartered in New York, IBM is self-described as an information technology company, which provides integrated solutions that leverage information technology and knowledge of business processes.¹

The Dispute

10. The Plaintiffs allege that the termination of their employment with IBM was the result of an illegal and age-discriminatory plan to reduce the overall age of IBM's workforce. The Plaintiffs seek to recover their lost earnings and other damages.

¹ wsj.com – retrieved February 10, 2022

Discussion and Analysis

Assumptions

11. While I am experienced in analyzing economic damages in litigation and dispute matters, I am not an attorney nor the finder of fact in this matter. I have not been requested to form, and I have not formed, any legal opinions on matters related to the alleged age discrimination and wrongful termination claims asserted by the Plaintiffs.

Summary of Opinions

12. I have calculated the lost earnings damages for each of the Plaintiffs as presented below. The detailed calculation for each Plaintiff is presented in Exhibit C.

Plaintiff Name	Future Value	Present Value
Davidson	\$ 424,188	\$ 402,617
Do	1,664,839	1,593,610
Gelphman	95,763	105,554
Hoque	1,485,711	1,283,106
Kelly	457,157	488,536
Noffsinger	2,405,784	2,251,449
Sauro	1,885,760	1,905,020
Townsley	2,500,171	2,455,604
Total Lost Earnings Damages	\$ 10,919,373	\$ 10,485,496

Methodology Utilized

13. My calculations of lost earnings damages are based upon my review of the information made available to me to date as identified in Exhibit B as well as my personal telephone interviews with each Plaintiff. These calculations are based upon the assumption that, absent the alleged wrongful terminations, the Plaintiffs would have remained employed with IBM from the time of their separation from IBM through the completion of their projected work life. This amount is then compared to their actual and future projected earnings after their separation from IBM through the completion of their projected work life. These amounts are also adjusted for interest and inflation factors.

14. This methodology is standard and commonly utilized in the measurement of the lost earnings damages of individuals.² Additional information concerning the methodology utilized in these damage calculations is discussed below.

15. **Work life expectancy** – There are widely accepted academic studies commonly utilized to calculate the expected work life of an individual based upon their age, education, and employment status.³ This work life expectancy has been utilized in these calculations unless the individual Plaintiff stated that their work life intentions differed from these calculated work life expectancies.

16. **Expected earnings from IBM** – These amounts have been calculated based upon the prior earnings information provided in document production in this matter for each Plaintiff beginning as of their separation from IBM. The earning histories of Plaintiffs with significant variable compensation, particularly sales commissions, have been averaged over multiple years to provide a basis for the projection of future earnings.

17. **Actual earnings after separation from IBM** – These amounts have been calculated based upon the actual earnings or unemployment compensation information provided in document production in this matter for each Plaintiff. To the extent that a Plaintiff is currently employed, the compensation from current employment is assumed to continue through their expected work life.

18. **Employment Fringe Benefits** – In addition to direct compensation, the Plaintiffs received fringe benefits from IBM in the form of paid leave, insurance, other legally required benefits such as social security contributions, among others. These fringe benefits have been calculated as a percentage of compensation based upon statistics compiled by the Bureau of Labor Statistics.⁴ To the extent that a Plaintiff received employment fringe benefits from employment after their separation from IBM, this same calculation has been applied to those earnings.

² Measurement of Damages Involving Individuals – American Institute of Certified Public Accountants, 2020

³ Skoog, Gary R., James E. Ciecka, and Kurt V. Krueger. 2011.

⁴ U.S. Department of Labor. Bureau of Labor Statistics. *Employer Costs for Employee Compensation – December 2020*.

19. **Other economic damages** – Such damages include forfeiture of IBM restricted stock units due to the separation of a Plaintiff from IBM. These amounts are calculated at the value of these restricted stock units at the time of separation of the Plaintiff from IBM.

20. **Actual and Projected Growth and Discount Factors** – The lost earnings calculations reflect the application of interest factors for both past and future lost earnings damages. This interest factor increases past lost earnings and decreases lost future earnings to give effect to the time value of money. A growth factor in expected future earnings from both IBM and from earnings after separation from IBM has also been applied to the calculations.

Overall Opinion

21. Based upon the information available to me as detailed in Exhibit B, the methodology described above and detailed in the Exhibit C calculation for each Plaintiff, it is my opinion that the lost earnings damages of the Plaintiffs total not less than \$10.9 million on a future value basis and \$10.4 million on a present value basis.

February 15, 2022



Mark Rambin, CPA, CFF

Exhibit A



Mark Rambin, CPA, CFF
Managing Director

1717 Main Street, Suite 3380
Dallas, Texas 75201
214.965.8534
mrambin@ea-us.com

Certifications

Certified Public Accountant

Certified in Financial Forensics

Professional Affiliations

American Institute of Certified
Public Accountants

Texas Society of Certified Public
Accountants

National Association of Forensic
Economics

Education

Bachelor of Business
Administration – Accounting
University of Texas at Austin

Mark Rambin is an experienced forensic accountant with a substantial background in financial investigation, the analysis of economic damages issues and litigation consulting. A Texas-licensed CPA for over 35 years, Mr. Rambin specializes in providing objective and fact-based analysis to his clients, allowing them to make better informed decisions about disputes, litigation, or other critical business challenges facing them.

Financial Investigation

Mr. Rambin's experience in financial investigation includes commercial litigation matters as well as engagements on behalf of bankruptcy trustees, receivers, and numerous government authorities and regulatory agencies, including the United States Department of Justice, the Texas Office of the Attorney General, the Federal Deposit Insurance Corporation, and the Texas Department of Insurance, among others. These matters have included the investigation of complex failures of financial institutions, insurance companies, and other businesses engaged in many industries. This work has been utilized in civil litigation and criminal prosecutions of former officers and directors, insiders, outside professionals, and other parties alleged to have caused damages, received preferential transfers, or committed illegal acts.

Economic Damages Issues

Mr. Rambin is regularly engaged by both plaintiff and defense litigation counsel to provide investigation, analysis, and expert opinions concerning economic damages related to disputes, claims, and litigation. Such matters often relate to claims of lost profits, business interruption losses, professional liability claims, complex property loss, personal injury or employment related claims, and trademark or trade secret disputes. His opinions, often presented through written reports and expert testimony, have been presented before Federal and State District courts and Bankruptcy courts in multiple jurisdictions throughout Texas and in other states.

Litigation Consulting

Mr. Rambin also has significant experience in working with counsel and their clients in performing general litigation consulting. He often provides plaintiff or defense counsel with investigation and fact-finding related to unasserted claims. In litigation matters, he regularly works closely with counsel to develop discovery plans, to identify potential sources of information, to draft production requests and interrogatories, and to analyze and evaluate large document populations. Mr. Rambin also works to prepare for depositions of fact and expert witnesses through the identification of relevant documents or issues, outside research, and with expert witnesses, through the detailed analysis of their expert reports, including the research of their prior reports and testimony in other matters. He has substantial experience in working with counsel in asserting or responding to *Daubert*-type

**Echelon Analytics is not
a CPA Firm.**

ea-us.com

Mark Rambin, CPA, CFF

challenges to the admissibility of accounting, financial, or other economic expert testimony.

Mr. Rambin's experience includes engagements in the following industries, among others:

- Agricultural and Commodities
- Banking and Financial Services
- Communications
- Construction
- Health Care
- High Technology
- Hospitality
- Insurance – Property & Casualty
- Insurance – Regulatory & Insolvency
- Manufacturing and Distribution
- Mortgage Lending and Servicing
- Oil & Gas Exploration and Production
- Professional Services
- Real Estate Development
- Real Estate Management
- Retail
- Software
- Transportation

Professional Experience

Some examples of Mr. Rambin's case experience include:

Accounting Malpractice

- **Audit failures.** Evaluated whether the accountant's work was conducted in accordance with Generally Accepted Auditing Standards. Reconstructed business and accounting records to determine the true financial condition of the company under audit, identified any misstatements, and developed facts to analyze interrelated liability, causation and damages issues. These audit failure accounting malpractice claims have involved audits of enterprises in several industries including financial institutions, manufacturing and distribution, commodities, retail sales, and insurance entities. The accounting firms involved have ranged from sole practitioners to regional, international, and the major Big 4 firms.
- **Tax shelters.** Served as a consulting expert to plaintiff counsel in an accounting malpractice matter involving allegedly abusive tax shelters, in which a Big 4 firm was a defendant. Assisted counsel with drafting discovery, identifying and interviewing potential expert witnesses, researching and documenting applicable professional standards, and in the review and analysis of a large volume of working papers, internal communications, and internal policy and technical standards information produced by the defendants. Provided assistance to counsel in their preparations for the depositions of client service team members including independent research of their professional backgrounds, their specific roles on the engagements in question, and in the identification of potential deposition exhibits and areas of inquiry. A significant confidential settlement was reached at the conclusion of the depositions of these individuals.

Mark Rambin, CPA, CFF

- **Financial restatement and accounting malpractice claim.** Engaged by Multi-national Corporation to investigate prior financial reporting practices of U.S. subsidiary. Identified significant overstatements of net income due to improper use of percentage of completion accounting method. Assisted client in the restatement process and in the successful pursuit of an accounting malpractice claim against prior outside auditor.

Oil & Gas Industry

- **Oil Field Service Provider Fraud Claims.** Evaluated claims that a water and wastewater hauling service provider was overbilling a mid-major exploration and production company for its services. Performed a comprehensive analysis and identified a massive scheme to defraud the exploration and production company. Provided expert testimony before the presiding bankruptcy judge in the Southern District of Texas resulting in a significant judgement entered against the service provider.
- **Joint Interest Audits and Investigations.** Provided assistance to working interest owners of individual wells or prospect ventures to evaluate whether the Operator was appropriately conducting joint interest operations in accordance with the Operating Agreement or other applicable agreements.
- **Litigation matters.** Provided expert services related to litigation between working interest owners and Operator of prospect concerning alleged breach of exploration agreement and overcharges and inappropriate expenditures billed to the joint interest. Assisted in litigation related to disputes over a natural gas farm-out agreement and the related development rights. This matter involved analysis of over 40 years of production and development records and coordination with a team of engineers and geologists in order to evaluate both the factual issues involved as well as the basis for damages claimed. Evaluated damage claims related to a dispute arising from the sale of a natural gas gathering system including analysis of historical and current operating and financial information in relation to the offering memorandum provided to prospective purchasers.
- **Consulting project related to closely-held oil and gas holdings.** Led a project team in the analysis of the administration of a complex family estate and multiple related trusts involving in oil and gas working interests valued in excess of one billion dollars and located throughout the United States. The objective of this project was to determine whether ownership interests and other development and royalty rights had been appropriately recognized over a time period in excess of 50 years. The project entailed detailed tracing of legal, oil and gas production and financial records from the inception of leasing and exploration activities through farm-outs, farm-ins, production pooling and unitizations, non-participations and other events relevant to the present ownership status of each property.

Mark Rambin, CPA, CFF

- **Transactional assistance.** Provided consulting services related to the transfer of diverse natural gas working interests to a publicly traded exploration and development company. This project required detail analysis of lease and farm-out agreements, agreements related to development rights, varying royalty and overriding interests, as well as varying working and net revenue interests at each multiple of payout.
- **Financial reporting.** Involved in numerous other financial reporting and consulting engagements relating to the oil and gas industry. These engagements have included exploration and production companies, independent producers, natural gas processing and carbon black production plants, refining operations and related oilfield service providers.

Bankruptcy and Insolvency

- **Oil & Gas exploration and production Company in liquidation.** Assisted the Chapter 7 trustee in assuming control of the offices and accounting and IT systems of the debtor (whose officers and employees abandoned the company offices upon the appointment of the trustee). Developed financial information to enable the trustee to secure the assets of the estate and to prepare schedules and monthly reporting for the court. Prepared all financial information required to support numerous complex adversary proceedings and other litigation related to alleged fraudulent transfers and disputed ownership of certain assets of the estate.
- **International shipping vessel operator in liquidation.** Assumed custody of all business and accounting records and assisted the Chapter 7 trustee in evaluating the solvency of the debtor in periods preceding the bankruptcy filing. Analyzed insider transactions that supported an adversary proceeding against the former shareholder of the company and assisted with discovery, depositions, and in evaluating the advisability of a compromise settlement of the claim.
- **Financial advisor in a telecommunications company Chapter 11.** Performed analysis on behalf of an unsecured creditors committee related to determining the solvency of the estate and an assessment of the continued viability of the business operations of a reorganized entity. Analyzed the current and historical operating information of the company to assist the committee in assessing the reasonableness of the financial projections of the debtor. Provided analysis and testimony for adversary proceedings against its principal lender and in the investigation of potential claims against its former directors and officers and outside accountants. Worked with committee counsel to develop a liquidation plan and supported the committee in its evaluation of alternative bids from prospective buyers of all or parts of the business.

Mark Rambin, CPA, CFF

- **Regional Homebuilder.** Provided consulting and testimony services to the Chapter 7 trustee for the identification and prosecution of claims to recover preferential transfers. Several actions related to claims against lenders receiving payments on insider secured debt during the 1-year period prior to bankruptcy filing. Assisted in resolving over one hundred 90-day preference actions on behalf of the trustee, including providing deposition and trial testimony. Performed detailed analysis of a significant volume of accounting and financial records to analyze solvency issues at the 1-year and 90-day periods and to identify potential preferential transfers relative to those periods.

Financial Investigation and Fraud

- **Litigation claim against the executor of a complex estate.** Provided consulting services to counsel defending an executor from claims asserted by a beneficiary of an estate. The estate involved several generations of trusts and varied asset classes including ranches, oil and gas interests, and other financial assets. This engagement required the analysis of detailed historical transaction records to identify appropriate treatment of distributable income vs. principal and the appropriateness of reimbursement claims and other transactions between the trusts, the ranches, and certain beneficiaries.
- **Investigation of claims asserted by the beneficiaries of a trust.** Assisted the beneficiaries of a trust and their outside counsel in the investigation of alleged self-dealing by its trustee. This project involved investigation of public records to identify undisclosed business relationships and related party transactions. Because of these transactions, a majority of the assets of the trust were invested in failed business ventures from which the trustee and his business partners withdrew substantial sums of money. The beneficiaries instituted litigation against the trustee based upon this investigation.
- **Fraud investigation of trustee.** Worked directly with a large family enterprise to investigate alleged fraudulent transactions involving the trustee of a family trust. Performed detailed analysis of multiple years of transactions, obtained financial records from third parties and researched the identities of several businesses and individuals receiving distributions from the trust. Identified unauthorized distributions made directly to the trustee and his relatives and business associates. Prepared a detailed listing of questioned transactions that formed the basis for the resignation of the trustee and a related claim for reimbursement to the trust.
- **Borrower fraud.** Investigated alleged misapplication of loan proceeds or removal of funds from single-asset entities subject to a mortgage, often through straw buyers, abusive property flips, misrepresentation of the lien status of assets securing the transaction, or unauthorized advances to related parties. These engagements often required detailed analysis of the sources and uses of loan and project proceeds and an investigation of the

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appropriateness of project expenditures and other transfers to determine the borrowers' potential liability for misapplication of funds.

- **Embezzlement.** Engaged by multi-state commercial property management firm to investigate alleged fraud by a departed executive. Assisted client in reconstruction of manipulated accounting records to quantify the loss. Developed Proof of Loss for insurance claim and for the subsequent criminal indictment of executive.
- **Breach of fiduciary duty.** Assisted counsel in the investigation of the actions of a company president. Identified significant misuse of company resources including ghost employees and unauthorized reimbursement for personal expenses such as personal airplane repairs and equipment upgrades, travel, and home remodeling. Documented diversion of corporate assets and opportunities to a competing business controlled by the president. When presented with findings, the president resigned and signed over ownership interests in the company and in the competing business.
- **Breach of non-compete agreement.** Assisted counsel in investigating the abrupt departure of a group of key employees subject to a non-compete agreement. Worked with computer forensics experts to analyze email and other electronic records. This information documented their plans for future competing business activities and their improper retention of confidential and proprietary information from the employer. Findings were presented in arbitration proceeding.

Damages Analysis in Complex Commercial Litigation

- **Manufacturing operations.** Provided consulting and expert services to manufacturers of industrial equipment and their counsel and insurers. In these matters, the claimants alleged that the failure of the equipment manufactured by the defendant interrupted the operation of a plant, factory, or other business process. The industries involved included defense contractors, agricultural and food products, construction, transportation, and consumer goods.
- **Retail operations.** Performed numerous engagements related to alleged failures of landlords to perform under retail lease agreements due to construction delays, equipment failures, water incursions, and fires. These matters required the analysis or reconstruction of historical financial information of the claimants to quantify projected lost revenues, fixed and variable costs, and excluded costs or saved expenses. These projects often included analysis and independent research of external factors such as general economic or industry circumstances that would affect the operations of the claimants and the efforts of the parties to mitigate any damages resulting from

Mark Rambin, CPA, CFF

these events. These engagements have included the evaluation and resolution of insurance claims and in matters involving litigation.

- **Major natural or man-made disasters.** Provided assistance to both claimants and insurers in preparing and evaluating business interruption claims related to catastrophic or mass claim occurrences such as fires, hurricanes, floods, and in the BP Deepwater Horizon incident. In addition to the claim considerations mentioned above, these matters often required detailed analysis of the causal relationship between the incident and the claimed damages.
- **Information technology.** Assisted counsel in responding to litigated business interruption claims related to the alleged failures of information technology systems utilized by financial services organizations. One matter involved an alleged system failure while the other involved deliberate sabotage. In each matter, evaluating the claimed damages required the analysis of the causal relationship between the facts and the alleged economic impacts and included significant analysis of the claimants' financial operations and independent economic and industry research.
- **Consumer class actions.** Assisted lenders who were defendants in consumer class action litigation. Identified populations of potential class members and analyzed specific liability issues related to the claims asserted by named plaintiffs and evaluated the potential applicability of these specific facts and claims to a broader population. Assisted in evaluating ranges of potential financial exposure under assumed liability and damages theories and various class definitions and populations.
- **Secured lending disputes.** Worked with lenders in disputes involving "floor plans" and other similar high-volume secured lending facilities. These have included lending facilities for automobiles, boats, recreational vehicles, heavy equipment, consumer paper, mortgage warehouse and premium finance involving allegations of misrepresentation as to the "in trust" status of the facility prior to default. Through reconstructing earlier financial transactions, identified the true historical financial positions of the facility and determined the methods utilized to conceal any collateral shortfalls. This work has been utilized in pursuing claims against the borrowers, outside accountants, and other parties.
- **Loan securitization disputes.** Evaluated loan underwriting and loan loss reserves regarding compliance with the written guidelines of a particular financial institution or of the terms of the mortgage participation, securitization or other pooling. This work has been used to evaluate potential damage claims of the participants or investors in these assets and in pursuit of claims against directors or officers of financial institutions or other lenders.



Exhibit A

Mark Rambin, CPA, CFF
Managing Director

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Dallas, Texas 75201
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mrambin@ea-us.com

Certifications

Certified Public Accountant

Certified in Financial Forensics

Professional Affiliations

American Institute of Certified
Public Accountants

Texas Society of Certified Public
Accountants

National Association of Forensic
Economics

Education

Bachelor of Business
Administration – Accounting
University of Texas at Austin

Recent Prior Testimony and Expert Reports

Confidential Investment Advisor Arbitration (Engaged by Defendant), FINRA
Arbitration, Houston, Texas, Expert Report

FDIC v. Hall, et al., United States District Court, Middle District of Florida, Expert
Report, Deposition Testimony

Gamez v. The Estate of Parrish, County Court at Law, Rockwall County, Texas, Expert
Testimony

Issa v. Issa, State District Court, Travis County, Texas, Expert Report

Ramos, et al. v. Cruz, et al. v. Lincoln Property Company Commercial, Inc., et al.,
State District Court, Dallas County, Texas, Expert Report

Dutch Bro LLC v. DutchPro, B.V., United States District Court, Western District of
Texas, Austin Division, Expert Report, Deposition Testimony

Fuller v. Bear Rental-Purchase, LTD., et al., State District Court, Williamson County,
Texas, Expert Report

Elumenus Lighting Corporation, Inc. v. Government Energy Management, LLC, et al.,
State District Court, Collin County, Texas, Expert Report, Deposition Testimony

Midstates Petroleum Company, Inc. v. Triple F Oilfield Services, LLC, United States
Bankruptcy Court, Southern District of Texas, Houston Division, Declaration and
Expert Report, Expert Testimony

Mitchell, et al. v. R&R Trucking, Inc., et al., State District Court, Childress County,
Texas, Expert Report, Deposition and Court Hearing Testimony

Sherry A. Coffman v. O'Reilly Automotive Stores, Inc., AAA Arbitration, Dallas, Texas,
Expert Report, Arbitration Hearing Testimony

Cardenas v. Ovation Services, LLC, State District Court, Travis County, Texas, Expert
Report, Deposition and Trial Testimony

Austin Children's Dentistry, Inc., et al. v. Williams, State District Court, Travis County,
Texas, Expert Reports

Potter v. Dehan, State District Court, Travis County, Texas, Expert Reports



Exhibit A
Mark Rabin

FEDD Wireless, LLC, et al. v. Flowserve US Inc., et al., State District Court, Harris County, Texas, Expert Report, Deposition and Trial Testimony

White Oak Global Advisors, LLC v. Tommy W. Weder, Sr., United States District Court, Western District of Oklahoma, Expert Report

Gray v. J.H. Strain & Sons, Inc., State District Court, Taylor County, Texas, Expert Report

Dynestic Technologies, Inc. v. Ali Mutlu, et al., State District Court, Dallas County, Texas, Expert Reports, Deposition Testimony

Mary M. Young, et al. v. Keith P. Young, Sr., et al., Probate Court, Dallas County, Texas, Expert Reports, Deposition Testimony

Halbert, et al. v. Scott, et al., State District Court, Travis County, Texas, Expert Reports

England v. O'Reilly Automotive Parts, et al., United States District Court, Eastern District of Texas, Tyler Division, Expert Report

Wagner v. Starwood Custom Homes LLC, et al., AAA Arbitration, Dallas, Texas, Expert Report, Deposition and Arbitration Hearing Testimony

Englehart, et al. v. Van Dyke, et al., United States District Court, Southern District of Texas, Houston Division, Expert Report

National Rifle Association of America, et al., v. Ackerman McQueen, Inc., United States District Court, Northern District of Texas, Dallas Division, Expert Reports

Van Brummen v. Hess Corporation, United States District Court, Southern District of Texas, Houston Division, Expert Report

Hugh Gray v. Mariam Gray, Circuit Court of Maryland for Baltimore County, Expert Report, Trial Testimony

Coffman v. Uniti Group, et al., Circuit Court for Baldwin County, Alabama, Expert Reports

Exhibit B. Information Considered

As of February 15, 2021

PL's Bates Label	DESCRIPTION
Davidson _____	
0169	Compensation Summary 2013-2014
0173	Emince & Excellence Award 2015 – Cash Award
0175	IBM Recognition Email 2015 - \$1000
0229-232	National Payroll Service – IBM 9/16/17-9/30/17; 10/16/17-10/31/17
0256-259	National Payroll Service – IBM 3/16/18-4/15/18
0262-263	Employee Salary Statement
0302	IBM Profit Share Notification – 2019
0365-377	Worker Profile
0397-398	W-2 2019
0399-405	W-2 2020
0406-436	TX Workforce Commission Search Log
0445-447	Cognizant Offer Letter
0536-537	2021 Form W-2

DF Bates Label	DESCRIPTION
IBK-DAV _____	
0000154	Portfolio Actions
0000307-309	Employee Profile Information – Roselyn Wolfe
0000310-445	Semi- Monthly Pay and Contributions Statement 1/1/17-12/30/2019
0000446-447	IBM Ltr 10-9-20 re 2016-2019 Salary Description
0000459-461	Employee Profile Information – Rosa Davidson
0000690-692	Employee Profile Information – Jacqueline Wilson
0000599	Simulation UTL30
0000592	UTL30
0000590	Simulating reductions of HC in IOT Platform and Watson Assistant for 2020
0000589	UTL Breakdown
0000580	Maple Assumptions
0000575	Maple Assumptions
0000572	Maple Assumptions
0000510	Summary of Q1-Q4
0000629	Q2-Q4 Savings
0000628	Q2-Q4 Savings
0000627	Q2-Q4 Savings
0000626	Q2-Q4 Savings
0000625	Q2-Q4 Savings
0000624	Q2-Q4 Savings
0000623	Q2-Q4 Savings
0000622	Q2-Q4 Savings
0000621	Portfolio Actions
0000619	Simulation at UTL30 for all actions

Exhibit B. Information Considered

As of February 15, 2021

0000618	UTL20 and UTL30
0000617	Simulation at UTL30 for all actions
0000616	Q2-Q4 Savings
0000608	Maple Assumptions
0000604	Portfolio Actions
0000603	Platform UTL30
0000658	UTL Breakout
0000644	Q2-Q4 Summary
0000643	Q2-Q4 Summary
0000640	Platform UTL30
0000641	Platform UTL30
0000639	Platform UTL30
0000638	Portfolio Actions
0000637	Q2-Q4 Savings
0000636	Q2-Q4 Savings
0000635	Q2-Q4 Savings
0000634	Q2-Q4 Savings
0000633	Q2-Q4 Savings
0000632	Q2-Q4 Savings
0000631	Q2-Q4 Savings
0000630	Q2-Q4 Savings

PL's Bates Label

DESCRIPTION

DO _____

0297-2099	Email from Rene Neumann to team re referral bonus for candidates to fill roles
0300	Growth Driver Profit-Sharing Statement - \$1400.00
0339	W-2 2018
0340	W-2 2019
3041-0342	IRS Tax Info 2019
0343-0344	IRS Tax Info 2020
0346-352	2018 Form W-2
0353-375	2021 Unemployment Compensation Information

DF Bates Label

DESCRIPTION

IBK-DO _____

0000188-190	Employee Profile Information – Andres Herrera
0000191-193	Employee Profile Information – Michel Dirk
0000407-409	Employee Profile Information – Gao Ounying
0000508-510	Employee Profile Information - Cai Young
583-817	Semi-Monthly Pay and Contribution Statement – Thanh Do 1/1/15- 12/30/19

Exhibit B. Information Considered

As of February 15, 2021

PL's Bates Label Gelphman _____	DESCRIPTION
0052-54	1040 Tax Form 2018
0055-57	1040 Tax Form 2019
0058	W2 Earnings Summary 2020
0061-62	Blue Yonder Earnings Statements
0118-121	Janet Gelphman Resume
0130-0151	Timeline of Events
0173-0174	Email re Senior Designer Position
0182-0194	Employment Agreement – GTN Technical Staffing
0224	Email re Gelphman's preferred rate/salary
1003-1006	Zip Recruiter Job Listings with title and salary
1667-1668	2020 Form 1040
1669	2018 Form 1099-G

DF Bates Label IBMK-GEL _____	DESCRIPTION
000066-68	Employee Profile Info – Ana Morales
000077-79	Employee Profile Info – Janet Gelphman
0000154-202	Semi Monthly Pay and Contribution Statements 1/1/16-12/31/16
0000203-251	Semi Monthly Pay and Contribution Statements 1/1/17- 12/31/17
0000252-273	Semi Monthly Pay and Contribution Statements 1/1/18-6/15/18
0000274	Pay and Contribution Statement 6/22/18
0000276	Pay and Contribution Statement 7/23/18
0000277	Pay and Contribution Statement 12/27/18

PL's Bates Label Hoque _____	DESCRIPTION
0103	IBM 401(k) Plus Plan
0104	Client Sources of Income Verification
0106-178	2020 Form 1040
0186-187	2021 Form W-2

DF Bates Label IBMK-HOQ _____	DESCRIPTION
0000172-174	Employee Profile Information – Natalie Vest
0000176	IBM – Salary Breakdown 10-9-20
0000177-179	IBM ltr re payroll info 10-23-18
	Checks from IBM to Hoque
0000193-195	Employee Profile Information – Titon Hoque

PL's Bates Label Kelly _____	DESCRIPTION
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Exhibit B. Information Considered

As of February 15, 2021

0122-124	Email frm Kelly to Allen Downes re revenue generated
0125	Email frm Kelly to Allen Downes re no Q1 bonus rec'd
0150-152	Email frm Kelly to Andrea Sayles re PIP and bonus rec'd
0178-200	2020 Form 1040
0225-228	Forms W-2 and 1099-G

DF Bates Label IBMK-KEL _____	DESCRIPTION
0000004	Investigation Summary – Q1 bonus
0000097-98	Employee History – Mike Kelly
0000101-102	Itemized Salary Description 2016-2018
0000109-111	Employee Profile Information – Michael Kelly

PL's Bates Label Noffsinger _____	DESCRIPTION
0001-0146	Noffsinger document production
0147-154	2021 Forms W-2
0155	Morgan Stanley account statement

DF Bates Label IBMK-NOF _____	DESCRIPTION
0000001-231	Semi-MonthlyPay and Contributions Statement
0000236-238	Employee profile info, including salary
0000286-407	Semi-MonthlyPay and Contributions Statement
0000604-620	2018 Global Performance Assessment
0000621-629	2019 Global Performance Assessment
0000630-632	Employee profile info, including salary
0000634-635	Employee History including awards \$
0000637	Pay stub
0000640-651	Employment offer & 401k
0000957961	Form W-4 (2019) and tax return
0000970-973	EOX Vanatge Employment offer
0000977-979	EOX pay stubs and W-2

PL's Bates Label Sauro _____	DESCRIPTION
0025-26	Ltr from J. Cox to Sauro re Federal Tax Return
0028-0035	Form 1040 (2018 tax yr)
0036-37	Form 8949 (2018 tax yr)
0038-39	Form 8889 (2018 tax yr)
0040	Form 8879 (2018 tax yr)

Exhibit B. Information Considered

As of February 15, 2021

0041	Federal Support Statements
0042	Summary of Estimates
0043	Estimated Tax Wrksht
0044	Computation of Regular Tax (2018)
0045	Qualified Dividends of form 1040 (2018)
0046	Investment Income of the Earned Income of form 1040 (2018)
0047	Carryover Wrksht (2018)
0048	Tax Return Comparison (2018)
0049-50	Payment Voucher Filing instructions (2018)
0051-0054	2020 Form 1040-ES Payment Vouchers
0055-63	Form 1040 (2019)
0064-65	Form 8889 (2019)
0066	Form 8995 (2019)
0067-70	Form 8283 (2019)
0071-76	Form 1040/ 1040 SR (2019)
0077-81	Form 8960 (2019)
0082-100	Charitable Organization Wrksht
0101	Persional Info Wrksht (2019)
0102-0104	W-2/W-2G Summary (2019)
0105-107	Form 1095-A (2019)
0108-109	1099-R (2019)
0110-114	Form 1099-SA (2019)
0115-117	Form 1040 (2019)
0118-119	Form 1099-B (2019)
0120-121	IRA Contributions Wrksht (2019)
0122	Medical Expenses Wrksht (2019)
0123	Tx Payments Wrksht (2019)
0124-125	Tax and Interest Deduction Worksheet (2019)
0126	Localty for Sale Tax Deductions (2019)
0127	State and Local Tax Deduction Worksheet (2019)
0128	Home Mortgage Interest Worksheet (2019)
0129	Cash Contributions (2019)
0130-138	Noncash Contributions (2019)
0139-143	Charitable Deduction Limits Wrksht (2019)
0144	Misc. Itemized Deductions Wrksht (2019)
0145	Standard Deduction Worksheet for Dependents (2019)
0146	Earned Income Worksheet (2019)
0147	Form 4952 Investment Interest Expense Worksheet (2019)
0148-150	Form 1040 Earned Income Credit Worksheet (2019)
0151	Form 4684 Casualty and Theft Worksheet (2019)
0152-159	Form 6251 Schedule D Tax Worksheet (2019)
0160-162	IRA Info Wrksht (2019)
0163	Form 8582 Modified Adjusted Gross Income Worksheet

Exhibit B. Information Considered

As of February 15, 2021

0164	Two-Year Comparisons (2019)
0165	Tax Summary (2019)
0166	Compare to U. S. Averages (2019)
0167-181	W-4 (2019)
0182-193	Smart Worksheets from your 2019 Federal Tax Return (2019)
0194-197	Form 1099-B Worksheet (AMERICAN ENTERPRISE INVESTMENT)
0251-274	2020 Form 1040
0275-277	2021 Form 1099-NEC

DF Bates Label IBMK-SAU _____	DESCRIPTION
0000178-179	Employee Personal Information – Carroll Hummer
0000190-192	Employee Personal Information – Chris Fender
0000274-276	Employee Personal Information – James Martinson
0000280-282	Employee Personal Information – John Kirian
0000283-285	Employee Personal Information – Kevin Zachary
0000351-353	Employee Personal Information – Michael Ashwell
0000354-355	IBM – Salary Itemized 2016-2018
0000367-369	Employee Personal Information – Thaddeus Trask
0000370-372	Employee Personal Information – William Taylor
0000585-594	Application for Employment – Sauro
0000600-602	Employee Profile Information – Michael Sauro
0000621-623	IBM Salary Sheet
0000624	Internal IBM Employment Date Pairs
0000625	Payroll Confirmation 6-4-79
0000634-683	Semi-Monthly Pay and Contribution Statement (2015)
0000730	W9 – Sauro 2020
0000731-733	2020 Nonemployee Compensation
0000734-744	Sedera, Inc. – Sauro (with invoices)
0000745-750	Emails between Sauro and Sedera re invoices

PL's Bates Label Townsley _____	DESCRIPTION
0026-0032	Revenue and ACV Bookings 1/25/17
0033-0039	Revenue and ACV Booking 7/24/17
0040-0067	Tax Return 2020
0080-0088	Revenue and ACV Booking 1/25/17
0089-0093	Incentive Statements 1/1/17-6/30/17
0094-0097	Incentive Statements 1/1/17-6/30/17 (dup.)
0098-0104	Revenue and ACV Booking 7/24/17 (dup.)
0105-0109	Incentive Statements 1/7/17-12/31/17
0110-0115	Incentive Statements 1/1/18-6/30/18
0116-0122	Incentive Statements 1/1/18-6/30/18 (dup.)

Exhibit B. Information Considered

As of February 15, 2021

0123-0128	Incentive Statements 1/1/18-6/30/18
0129-0131	Incentive Plan Search 2015
0132-0134	Incentive Plan Search 2016
0135-0156	IBM Benefit Program
0157-0158	Semi Monthly Oay and Contributions Statement 6/1-6/15/18
0159-0161	Employee History
0163-0165	Incentive Plan Search 2015 (dup.)
0166-0168	Incentive Plan Search 2016
0169-0183	Incentive Statement 2017
0184-0200	Incentive Statement 2018
0201-0210	Incentive Calculation 2018
0211-0213	Employee History (dup.)
0214-0217	Performance Assessment 2016
0218-0220	Performance Assessment 2017
0221-0246	100 Percent Club 2017
0247-0251	100 Percent Club 2018
0265-0268	Performance Assessment 2016 (dup.)
0269-0272	Performance Assessment 2017 (dup.)
0273	Direct Pay Confirmation 12/15/2020
0277-0278	Eminence and Excellence Cash Award 5/18/18
0279-0280	Eminence and Excellence Cash Award 5/18/18 (dup.)
0284-0311	100 Percent Club 2017 (dup.)
0319-0321	Employee History (dup.)
0322-0326	SEA Honorees 2014
0327	Bonus Log
0328-0332	SEA Honorees 2014 (dup.)
0334-0369	Tax Return 2018
0370-0403	Tax Return 2019
0404-0407	Unemployment Benefits
0411-601	Forms 1040 2013-2020 and 2018 Unemploment information
0602-603	2021 Form W-2

DF Bates Label	DESCRIPTION
IBMK-TOW _____	
0000096-99	Emails re overpayment to Townsley
0000100-103	Email re payment
0000111	Employee Chart with salary codes
0000168-170	Employee Profile Information – Justin Crohn
0000381-383	Employee Profile Information – Kalman Gyimesi
0000384-433	Semi-Monthly Payroll Statements 1/1/15-
0000541	Employee Chart with salary codes
0000586	Revenue chart
0000588	Revenue chart

Exhibit B. Information Considered

As of February 15, 2021

0000600	Pipeline Indicators
0000601	Pipeline Indicators
0000603	Pipeline Progression
0000604	Revenue Chart
0000723-863	Emails between Townsley and IBM re money owed by Townsley
0000881-1048	Emails between Townsley and IBM re money owed by Townsley (2)
0001069	Pipeline Indicators
0001070	Pipeline Indicators
0001074	Pipeline Progression
0001078	Pipeline Progression
0001191-1206	Emails between Townsley and IBM re money owed by Townsley (3)
0001234-1244	Emails between Townsley and IBM re money owed by Townsley (4)
0001269-1270	IBM Salary Itemizations (2016-2018)
0001271-0001277	IBM Confidential Performance Assessment
0001280-1289	IBM Application for Employment (5/13/1985)
0001339	Fidelity – Define Benefit System
0001340-1342	Position and Salary Chart
0001343	Personal Pension Account
0001344	Date of Hire wrksht
0001345-1346	Update Misc. Hire Data
0001360-1361	Checklist of Financial Obligations/ Property
0001380-1382	Employee Profile Information – Chuck Townlsey
0001408-1411	Earning Report
00001412-1417	Oracle – Payroll Report
0001418-1422	W2 2019
0001423-1431	State Tax Rules 2019-2021
0001432-1445	FY21 Annual Evaluation - Oracle
0001452-1458	Health – Election History 2019-2020
0001460-1495	Time Entry Report - Oracle
0001496-1497	Job Offer Ltr – Oracle 5/14/2019
NATIVES	
0000596	Cloud Node Based Weekly Key Deals Report
0000594	Cloud Node Based Weekly Key Deals Report
0000588	Total Pipeline
586	Total Pipeline
600	SOM Excel
604	Total Pipeline

Social Security Administration Average Wage Index 1984-2020

Social Security Administration Cost Of Living Adjustments 1975-2022

Federal Open Market Committee Summary of Economic Projections December 15, 2021

Rosa Davidson

General Information

Damages Date: 9/30/2019
 Trial or Settlement Date: 10/1/2022
 Interest Rate (Past Damages): 2.00%
 Discount Rate (Future Damages): 2.50%
 Periodic Compounding: Annually
 Present Value Interest Calculation: Simple Interest

Plaintiff Information

Gender: Female
 Race: Hispanic
 Birth Date: 4/10/1962
 Age at Injury: 57.47
 Projected Retirement Age*: 70.00
 Projected Age at Death**: 86.65

* Ms. Davidson has stated that her intention was to remain employed by IBM until age 70.

** Life expectancy calculated for Hispanic women. Study used: United States Life Tables, 2017 by Elizabeth Arias, Ph.D., and Jiaquan Xu, M.D., Division of Vital Statistics, National Vital Statistics Reports, Volume 68, Number 7, June 24 2019.

Damages Summary

	Future Values		Present Values	
	Pre-Trial	Post-Trial	Pre-Trial	Post-Trial
Lost Income	\$96,815	\$165,664	\$100,176	\$146,222
Lost Fringe Benefits	\$88,187	\$73,522	\$91,327	\$64,893
Subtotal: Lost Earnings	\$185,003	\$239,185	\$191,503	\$211,115
Other Damages	\$0	\$0	\$0	\$0
Total Damages	\$185,003	\$239,185	\$191,503	\$211,115
Grand Total Damages	\$424,188		\$402,617	

Lost Income

Projected Employment Without Damages

From	To	Occupation	Employer	Initial Salary	Benefits %	Pre-Trial Growth	Post-Trial Growth
10/01/19	04/10/32	Software Developer	IBM	\$147,372	44.38%	3.00%	3.00%

Actual and Projected Employment With Damages

From	To	Occupation	Employer	Initial Salary	Benefits %	Pre-Trial Growth	Post-Trial Growth
10/01/19	12/31/19	Unemployed	Texas Workforce Commission	\$7,605	0.00%	0.00%	0.00%
01/01/20	05/31/20	Unemployed	Texas Workforce Commission	\$11,829	0.00%	0.00%	0.00%
06/01/20	11/29/20	Consultant	Aditi Consulting	\$82,460	0.00%	0.00%	0.00%
11/30/20	12/31/20	Security Architect	Cognizant Technology	\$145,000	44.38%	0.00%	0.00%
01/01/21	04/10/32	Security Architect	Cognizant Technology	\$145,000	44.38%	0.00%	3.00%

Pre-Trial Lost Income

Period	From	To	Income	Benefits	Total Uninjured	Income	Benefits	Total Injured	Loss	Present Value
1	09/30/19	12/31/19	\$37,146	\$16,485	\$53,631	\$7,605	\$0	\$7,605	\$46,026	\$48,556
2	01/01/20	12/31/20	\$151,793	\$67,366	\$219,159	\$106,967	\$5,626	\$112,593	\$106,566	\$110,291
3	01/01/21	12/31/21	\$156,347	\$69,387	\$225,734	\$145,000	\$64,351	\$209,351	\$16,383	\$16,628
4	01/01/22	09/30/22	\$119,553	\$53,058	\$172,611	\$108,452	\$48,131	\$156,583	\$16,028	\$16,028
Total	09/30/19	09/30/22	\$464,839	\$206,296	\$671,135	\$368,024	\$118,108	\$486,132	\$185,003	\$191,503

Post-Trial Lost Income

Period	From	To	Income	Benefits	Total Uninjured	Income	Benefits	Total Injured	Loss	Present Value
1	10/01/22	12/31/22	\$40,590	\$18,014	\$58,604	\$36,821	\$16,341	\$53,163	\$5,442	\$5,408
2	01/01/23	12/31/23	\$165,868	\$73,612	\$239,481	\$150,467	\$66,777	\$217,244	\$22,237	\$21,562
3	01/01/24	12/31/24	\$170,845	\$75,821	\$246,665	\$154,981	\$68,781	\$223,761	\$22,904	\$21,683
4	01/01/25	12/31/25	\$175,970	\$78,095	\$254,065	\$159,630	\$70,844	\$230,474	\$23,591	\$21,817
5	01/01/26	12/31/26	\$181,249	\$80,438	\$261,687	\$164,419	\$72,969	\$237,388	\$24,299	\$21,964
6	01/01/27	12/31/27	\$186,686	\$82,851	\$269,538	\$169,352	\$75,158	\$244,510	\$25,028	\$22,123
7	01/01/28	12/31/28	\$192,287	\$85,337	\$277,624	\$174,432	\$77,413	\$251,845	\$25,779	\$22,294
8	01/01/29	12/31/29	\$198,056	\$87,897	\$285,953	\$179,665	\$79,735	\$259,401	\$26,552	\$22,477
9	01/01/30	12/31/30	\$203,997	\$90,534	\$294,531	\$185,055	\$82,128	\$267,183	\$27,349	\$22,671
10	01/01/31	12/31/31	\$210,117	\$93,250	\$303,367	\$190,607	\$84,591	\$275,198	\$28,169	\$22,877
11	01/01/32	12/31/32	\$58,458	\$25,944	\$84,402	\$53,030	\$23,535	\$76,565	\$7,837	\$6,238
Total	10/01/22	12/02/48	\$1,784,124	\$791,794	\$2,575,918	\$1,618,460	\$718,273	\$2,336,733	\$239,185	\$211,115

Thanh Do

General Information

Damages Date:	9/4/2019
Trial or Settlement Date:	10/1/2022
Interest Rate (Past Damages):	2.00%
Discount Rate (Future Damages):	2.50%
Periodic Compounding:	Annually
Present Value Interest Calculation:	Simple Interest

Plaintiff Information

Gender:	Female
Race:	White
Birth Date:	2/20/1961
Age at Injury:	58.54
Projected Retirement Age*:	66.85
Projected Age at Death**:	84.45

* Worklife expectancy calculated for all women active in the workforce with a master's degree. Study used: The Markov Process Model of Labor Force Activity: Extended Tables of Central Tendency, Shape, Percentile Points, and Bootstrap Standard Errors, Gary R. Skoog, James E. Ciecka and Kurt V. Krueger, Journal of Forensic Economics, 22(2), 2011.

** Life expectancy calculated for white women. Study used: United States Life Tables, 2017 by Elizabeth Arias, Ph.D., and Jiaquan Xu, M.D., Division of Vital Statistics, National Vital Statistics Reports, Volume 68, Number 7, June 24, 2019.

Damages Summary

	Future Values		Present Values	
	Pre-Trial	Post-Trial	Pre-Trial	Post-Trial
Lost Income	\$347,961	\$786,893	\$354,980	\$729,989
Lost Fringe Benefits	\$180,763	\$349,223	\$184,671	\$323,969
Subtotal: Lost Earnings	\$528,723	\$1,136,116	\$539,651	\$1,053,959
Other Damages	\$0	\$0	\$0	\$0
Total Damages	\$528,723	\$1,136,116	\$539,651	\$1,053,959
Grand Total Damages	\$1,664,839		\$1,593,610	

Lost Income

Projected Employment Without Damages

From	To	Occupation	Employer	Initial Salary	Benefits %	Pre-Trial Growth	Post-Trial Growth
09/04/19	12/27/27	Senior Software Engineer	IBM	\$126,173	44.38%	3.00%	3.00%

Actual and Projected Employment With Damages

From	To	Occupation	Employer	Initial Salary	Benefits %	Pre-Trial Growth	Post-Trial Growth
09/04/19	12/31/19	Unemployed	Texas Workforce Commission	\$6,591	0.00%	0.00%	0.00%
01/01/20	12/31/20	Unemployed	Texas Workforce Commission	\$31,773	0.00%	0.00%	0.00%
01/01/21	12/31/21	Unemployed	Texas Workforce Commission	\$20,982	0.00%	0.00%	0.00%

Pre-Trial Lost Income

Period	From	To	Income	Benefits	Total Uninjured	Income	Benefits	Total Injured	Loss	Present Value
1	09/04/19	12/31/19	\$41,136	\$18,256	\$59,392	\$6,591	\$0	\$6,591	\$52,801	\$55,703
2	01/01/20	12/31/20	\$129,958	\$57,675	\$187,634	\$31,773	\$0	\$31,773	\$155,861	\$161,309
3	01/01/21	12/31/21	\$133,857	\$59,406	\$193,263	\$20,982	\$0	\$20,982	\$172,281	\$174,858
4	01/01/22	09/30/22	\$102,356	\$45,425	\$147,781	\$0	\$0	\$0	\$147,781	\$147,781
Total	09/04/19	09/30/22	\$407,307	\$180,763	\$588,069	\$59,346	\$0	\$59,346	\$528,723	\$539,651

Post-Trial Lost Income

Period	From	To	Income	Benefits	Total Uninjured	Income	Benefits	Total Injured	Loss	Present Value
1	10/01/22	12/31/22	\$34,751	\$15,423	\$50,174	\$0	\$0	\$0	\$50,174	\$49,860
2	01/01/23	12/31/23	\$142,009	\$63,024	\$205,032	\$0	\$0	\$0	\$205,032	\$198,809
3	01/01/24	12/31/24	\$146,269	\$64,914	\$211,183	\$0	\$0	\$0	\$211,183	\$199,927
4	01/01/25	12/31/25	\$150,657	\$66,862	\$217,519	\$0	\$0	\$0	\$217,519	\$201,164
5	01/01/26	12/31/26	\$155,177	\$68,867	\$224,044	\$0	\$0	\$0	\$224,044	\$202,517
6	01/01/27	12/31/27	\$158,029	\$70,133	\$228,163	\$0	\$0	\$0	\$228,163	\$201,682
Total	10/01/22	08/04/45	\$786,893	\$349,223	\$1,136,116	\$0	\$0	\$0	\$1,136,116	\$1,053,959

Janet Gelpman

General Information

Damages Date:	6/27/2018
Trial or Settlement Date:	10/1/2022
Interest Rate (Past Damages):	2.00%
Discount Rate (Future Damages):	2.50%
Periodic Compounding:	Annually
Present Value Interest Calculation:	Simple Interest

Plaintiff Information

Gender:	Female
Race:	White
Birth Date:	2/9/1955
Age at Injury:	63.38
Projected Retirement Age*:	69.08
Projected Age at Death**:	85.28

* Worklife expectancy calculated for all women active in the workforce with a bachelor's degree. Study used: The Markov Process Model of Labor Force Activity: Extended Tables of Central Tendency, Shape, Percentile Points, and Bootstrap Standard Errors, Gary R. Skoog, James E. Ciecka and Kurt V. Krueger, Journal of Forensic Economics, 22(2), 2011.

** Life expectancy calculated for white women. Study used: United States Life Tables, 2017 by Elizabeth Arias, Ph.D., and Jiaquan Xu, M.D., Division of Vital Statistics, National Vital Statistics Reports, Volume 68, Number 7, June 24, 2019.

Damages Summary

	Future Values		Present Values	
	Pre-Trial	Post-Trial	Pre-Trial	Post-Trial
Lost Income	\$64,616	(\$12,947)	\$70,181	(\$12,568)
Lost Fringe Benefits	\$49,840	(\$5,746)	\$53,519	(\$5,578)
Subtotal: Lost Earnings	\$114,456	(\$18,693)	\$123,700	(\$18,146)
Other Damages	\$0	\$0	\$0	\$0
Total Damages	\$114,456	(\$18,693)	\$123,700	(\$18,146)
Grand Total Damages	\$95,763		\$105,554	

Lost Income

Projected Employment Without Damages

From	To	Occupation	Employer	Initial Salary	Benefits %	Pre-Trial Growth	Post-Trial Growth
06/27/18	03/09/24	UX Designer	IBM	\$99,996	44.38%	3.00%	3.00%

Actual and Projected Employment With Damages

From	To	Occupation	Employer	Initial Salary	Benefits %	Pre-Trial Growth	Post-Trial Growth
06/27/18	12/31/18	Unemployment Compensation	Texas Workforce Commission	\$10,374	0.00%	0.00%	0.00%
01/01/19	07/31/19	Unemployment Compensation	Texas Workforce Commission	\$2,470	0.00%	0.00%	0.00%
08/01/19	11/30/19	UX Contractor	GTN	\$39,872	0.00%	0.00%	0.00%
12/01/19	03/09/24	UX Architect	Blue Yonder Inc.	\$120,410	44.38%	0.00%	3.00%

Pre-Trial Lost Income

Period	From	To	Income	Benefits	Total Uninjured	Income	Benefits	Total Injured	Loss	Present Value
1	06/27/18	12/31/18	\$51,505	\$22,858	\$74,363	\$5,343	\$0	\$5,343	\$69,019	\$74,193
2	01/01/19	12/31/19	\$102,996	\$45,710	\$148,705	\$52,569	\$4,539	\$57,107	\$91,598	\$96,632
3	01/01/20	12/31/20	\$106,086	\$47,081	\$153,167	\$120,410	\$53,438	\$173,848	(\$20,681)	(\$21,404)
4	01/01/21	12/31/21	\$109,268	\$48,493	\$157,762	\$120,410	\$53,438	\$173,848	(\$16,086)	(\$16,327)
5	01/01/22	09/30/22	\$83,554	\$37,081	\$120,635	\$90,060	\$39,969	\$130,029	(\$9,394)	(\$9,394)
Total	06/27/18	09/30/22	\$453,408	\$201,223	\$654,631	\$388,792	\$151,383	\$540,175	\$114,456	\$123,700

Post-Trial Lost Income

Period	From	To	Income	Benefits	Total Uninjured	Income	Benefits	Total Injured	Loss	Present Value
1	10/01/22	12/31/22	\$28,368	\$12,590	\$40,958	\$30,577	\$13,570	\$44,147	(\$3,189)	(\$3,169)
2	01/01/23	12/31/23	\$115,923	\$51,447	\$167,369	\$124,950	\$55,453	\$180,402	(\$13,033)	(\$12,638)
3	01/01/24	12/31/24	\$21,976	\$9,753	\$31,730	\$23,688	\$10,513	\$34,200	(\$2,471)	(\$2,339)
Total	10/01/22	05/19/40	\$166,267	\$73,789	\$240,056	\$179,214	\$79,535	\$258,750	(\$18,693)	(\$18,146)

Titon Hoque

General Information

Damages Date:	7/18/2018
Trial or Settlement Date:	10/1/2022
Interest Rate (Past Damages):	2.00%
Discount Rate (Future Damages):	2.50%
Periodic Compounding:	Annually
Present Value Interest Calculation:	Simple Interest

Plaintiff Information

Gender:	Male
Race:	White
Birth Date:	1/24/1974
Age at Injury:	44.48
Projected Retirement Age*:	70.00
Projected Age at Death**:	79.25

- * Mr. Hoque has stated that it was his intention to remain employed by IBM until age 70.
- ** Life expectancy calculated for white men. Study used: United States Life Tables, 2017 by Elizabeth Arias, Ph.D., and Jiaquan Xu, M.D., Division of Vital Statistics, National Vital Statistics Reports, Volume 68, Number 7, June 24, 2019.

Damages Summary

	Future Values		Present Values	
	Pre-Trial	Post-Trial	Pre-Trial	Post-Trial
Lost Income	\$278,054	\$700,631	\$292,626	\$543,867
Lost Fringe Benefits	\$196,087	\$310,940	\$205,244	\$241,368
Subtotal: Lost Earnings	\$474,140	\$1,011,571	\$497,870	\$785,236
Other Damages	\$0	\$0	\$0	\$0
Total Damages	\$474,140	\$1,011,571	\$497,870	\$785,236
Grand Total Damages	\$1,485,711		\$1,283,106	

Lost Income

Projected Employment Without Damages

From	To	Occupation	Employer	Initial Salary	Benefits %	Pre-Trial Growth	Post-Trial Growth
07/18/18	01/24/44	Technical Services Professional	IBM	\$158,952	44.38%	3.00%	3.00%

Actual and Projected Employment With Damages

From	To	Occupation	Employer	Initial Salary	Benefits %	Pre-Trial Growth	Post-Trial Growth
07/18/18	12/31/18	Unemployed	Texas Workforce Commission	\$8,398	0.00%	0.00%	0.00%
01/01/20	12/31/20	Sole Proprietor	HHH LLC	\$155,384	0.00%	0.00%	0.00%
01/01/21	01/24/44	Technology Specialist	Austin Community College	\$154,324	44.38%	0.00%	3.00%

Pre-Trial Lost Income

Period	From	To	Income	Benefits	Total Uninjured	Income	Benefits	Total Injured	Loss	Present Value
1	07/18/18	12/31/18	\$72,726	\$32,276	\$105,002	\$8,398	\$0	\$8,398	\$96,604	\$103,845
2	01/01/19	12/31/19	\$163,721	\$72,659	\$236,380	\$0	\$0	\$0	\$236,380	\$249,371
3	01/01/20	12/31/20	\$168,632	\$74,839	\$243,471	\$155,384	\$0	\$155,384	\$88,087	\$91,167
4	01/01/21	12/31/21	\$173,691	\$77,084	\$250,775	\$154,324	\$68,489	\$222,813	\$27,962	\$28,381
5	01/01/22	09/30/22	\$132,816	\$58,944	\$191,759	\$115,426	\$51,226	\$166,652	\$25,107	\$25,107
Total	07/18/18	09/30/22	\$711,585	\$315,802	\$1,027,387	\$433,532	\$119,715	\$553,247	\$474,140	\$497,870

Post-Trial Lost Income

Period	From	To	Income	Benefits	Total Uninjured	Income	Benefits	Total Injured	Loss	Present Value
1	10/01/22	12/31/22	\$45,093	\$20,012	\$65,105	\$39,189	\$17,392	\$56,581	\$8,524	\$8,471
2	01/01/23	12/31/23	\$184,269	\$81,779	\$266,047	\$160,142	\$71,071	\$231,214	\$34,834	\$33,777
3	01/01/24	12/31/24	\$189,797	\$84,232	\$274,029	\$164,947	\$73,203	\$238,150	\$35,879	\$33,967
4	01/01/25	12/31/25	\$195,491	\$86,759	\$282,250	\$169,895	\$75,399	\$245,295	\$36,955	\$34,177
5	01/01/26	12/31/26	\$201,356	\$89,362	\$290,717	\$174,992	\$77,661	\$252,653	\$38,064	\$34,406
6	01/01/27	12/31/27	\$207,396	\$92,042	\$299,439	\$180,242	\$79,991	\$260,233	\$39,206	\$34,656
7	01/01/28	12/31/28	\$213,618	\$94,804	\$308,422	\$185,649	\$82,391	\$268,040	\$40,382	\$34,923
8	01/01/29	12/31/29	\$220,027	\$97,648	\$317,675	\$191,218	\$84,863	\$276,081	\$41,593	\$35,210
9	01/01/30	12/31/30	\$226,628	\$100,577	\$327,205	\$196,955	\$87,409	\$284,364	\$42,841	\$35,515
10	01/01/31	12/31/31	\$233,426	\$103,595	\$337,021	\$202,864	\$90,031	\$292,894	\$44,126	\$35,837
11	01/01/32	12/31/32	\$240,429	\$106,702	\$347,132	\$208,950	\$92,732	\$301,681	\$45,450	\$36,178
12	01/01/33	12/31/33	\$247,642	\$109,904	\$357,546	\$215,218	\$95,514	\$310,732	\$46,814	\$36,536
13	01/01/34	12/31/34	\$255,071	\$113,201	\$368,272	\$221,675	\$98,379	\$320,054	\$48,218	\$36,912
14	01/01/35	12/31/35	\$262,723	\$116,597	\$379,320	\$228,325	\$101,331	\$329,655	\$49,665	\$37,305
15	01/01/36	12/31/36	\$270,605	\$120,095	\$390,700	\$235,175	\$104,370	\$339,545	\$51,155	\$37,716
16	01/01/37	12/31/37	\$278,723	\$123,697	\$402,421	\$242,230	\$107,502	\$349,731	\$52,689	\$38,145
17	01/01/38	12/31/38	\$287,085	\$127,408	\$414,493	\$249,497	\$110,727	\$360,223	\$54,270	\$38,591
18	01/01/39	12/31/39	\$295,698	\$131,231	\$426,928	\$256,982	\$114,048	\$371,030	\$55,898	\$39,054

Exhibit C

Period	From	To	Income	Benefits	Total Uninjured	Income	Benefits	Total Injured	Loss	Present Value
19	01/01/40	12/31/40	\$304,568	\$135,167	\$439,736	\$264,691	\$117,470	\$382,161	\$57,575	\$39,535
20	01/01/41	12/31/41	\$313,706	\$139,223	\$452,928	\$272,632	\$120,994	\$393,626	\$59,302	\$40,034
21	01/01/42	12/31/42	\$323,117	\$143,399	\$466,516	\$280,811	\$124,624	\$405,434	\$61,081	\$40,551
22	01/01/43	12/31/43	\$332,810	\$147,701	\$480,511	\$289,235	\$128,363	\$417,598	\$62,914	\$41,085
23	01/01/44	12/31/44	\$21,866	\$9,704	\$31,570	\$19,003	\$8,434	\$27,437	\$4,134	\$2,656
Total	10/01/22	04/24/53	\$5,351,144	\$2,374,838	\$7,725,982	\$4,650,514	\$2,063,898	\$6,714,412	\$1,011,571	\$785,236

Michael Kelly

General Information

Damages Date:	6/30/2018
Trial or Settlement Date:	10/1/2022
Interest Rate (Past Damages):	2.00%
Discount Rate (Future Damages):	2.50%
Periodic Compounding:	Annually
Present Value Interest Calculation:	Simple Interest

Plaintiff Information

Gender:	Male
Race:	White
Birth Date:	12/30/1958
Age at Injury:	59.50
Projected Retirement Age*:	66.73
Projected Age at Death**:	81.70

* Worklife expectancy calculated for all men active in the workforce with a bachelor's degree. Study used: The Markov Process Model of Labor Force Activity: Extended Tables of Central Tendency, Shape, Percentile Points, and Bootstrap Standard Errors, Gary R. Skoog, James E. Ciecka and Kurt V. Krueger, Journal of Forensic Economics, 22(2), 2011.

** Life expectancy calculated for white men. Study used: United States Life Tables, 2017 by Elizabeth Arias, Ph.D., and Jiaquan Xu, M.D., Division of Vital Statistics, National Vital Statistics Reports, Volume 68, Number 7, June 24, 2019.

Damages Summary

	Future Values		Present Values	
	Pre-Trial	Post-Trial	Pre-Trial	Post-Trial
Lost Income	\$340,030	(\$31,210)	\$359,587	(\$29,340)
Lost Fringe Benefits	\$162,188	(\$13,851)	\$171,310	(\$13,021)
Subtotal: Lost Earnings	\$502,218	(\$45,061)	\$530,897	(\$42,360)
Other Damages	\$0	\$0	\$0	\$0
Total Damages	\$502,218	(\$45,061)	\$530,897	(\$42,360)
Grand Total Damages	\$457,157		\$488,536	

Lost Income

Projected Employment Without Damages

From	To	Occupation	Employer	Initial Salary	Benefits %	Pre-Trial Growth	Post-Trial Growth
06/30/18	09/22/25	Sales Specialist	IBM	\$254,230	44.38%	0.00%	0.00%

Actual and Projected Employment With Damages

From	To	Occupation	Employer	Initial Salary	Benefits %	Pre-Trial Growth	Post-Trial Growth
01/01/19	04/30/19	Unemployment	Texas Workforce Commission	\$5,434	0.00%	0.00%	0.00%
05/01/19	12/31/19	Senior Director	HID Global	\$113,258	44.38%	0.00%	0.00%
01/01/20	08/31/20	Senior Director	HID Global	\$166,000	44.38%	0.00%	0.00%
09/01/20	12/31/20	Unemployment	Texas Workforce Commission	\$19,988	0.00%	0.00%	0.00%
01/01/21	09/22/25	Global Channel Director	Measurabl	\$250,000	44.38%	0.00%	3.00%

Pre-Trial Lost Income

Period	From	To	Income	Benefits	Total Uninjured	Income	Benefits	Total Injured	Loss	Present Value
1	06/30/18	12/31/18	\$128,856	\$57,186	\$186,043	\$0	\$0	\$0	\$186,043	\$199,988
2	01/01/19	12/31/19	\$254,230	\$112,827	\$367,057	\$118,692	\$50,264	\$168,956	\$198,101	\$208,989
3	01/01/20	12/31/20	\$254,230	\$112,827	\$367,057	\$185,988	\$73,671	\$259,659	\$107,398	\$111,153
4	01/01/21	12/31/21	\$254,230	\$112,827	\$367,057	\$250,000	\$110,950	\$360,950	\$6,107	\$6,199
5	01/01/22	09/30/22	\$190,150	\$84,389	\$274,539	\$186,986	\$82,985	\$269,971	\$4,568	\$4,568
Total	06/30/18	09/30/22	\$1,081,696	\$480,057	\$1,561,753	\$741,666	\$317,869	\$1,059,536	\$502,218	\$530,897

Post-Trial Lost Income

Period	From	To	Income	Benefits	Total Uninjured	Income	Benefits	Total Injured	Loss	Present Value
1	10/01/22	12/31/22	\$64,080	\$28,439	\$92,519	\$63,485	\$28,175	\$91,660	\$859	\$854
2	01/01/23	12/31/23	\$254,230	\$112,827	\$367,057	\$259,426	\$115,133	\$374,559	(\$7,501)	(\$7,274)
3	01/01/24	12/31/24	\$254,230	\$112,827	\$367,057	\$267,208	\$118,587	\$385,796	(\$18,738)	(\$17,739)
4	01/01/25	12/31/25	\$184,578	\$81,916	\$266,494	\$198,209	\$87,965	\$286,174	(\$19,680)	(\$18,201)
Total	10/01/22	09/10/40	\$757,118	\$336,009	\$1,093,127	\$788,328	\$349,860	\$1,138,188	(\$45,061)	(\$42,360)

Walter Noffsinger

General Information

Damages Date:	6/22/2020
Trial or Settlement Date:	10/1/2022
Interest Rate (Past Damages):	2.00%
Discount Rate (Future Damages):	2.50%
Periodic Compounding:	Annually
Present Value Interest Calculation:	Simple Interest

Plaintiff Information

Gender:	Male
Race:	White
Birth Date:	3/7/1960
Age at Injury:	60.29
Projected Retirement Age*:	70.00
Projected Age at Death**:	81.86

* Mr. Noffsinger has stated that it was his intention to remain employed by IBM until age 70.

** Life expectancy calculated for white men. Study used: United States Life Tables, 2017 by Elizabeth Arias, Ph.D., and Jiaquan Xu, M.D., Division of Vital Statistics, National Vital Statistics Reports, Volume 68, Number 7, June 24, 2019.

Damages Summary

	Future Values		Present Values	
	Pre-Trial	Post-Trial	Pre-Trial	Post-Trial
Lost Income	\$387,288	\$1,206,489	\$393,615	\$1,090,765
Lost Fringe Benefits	\$182,496	\$535,440	\$185,628	\$484,082
Subtotal: Lost Earnings	\$569,784	\$1,741,929	\$579,243	\$1,574,847
Other Damages	\$94,071	\$0	\$97,360	\$0
Total Damages	\$663,855	\$1,741,929	\$676,602	\$1,574,847
Grand Total Damages	\$2,405,784		\$2,251,449	

Lost Income

Projected Employment Without Damages

From	To	Occupation	Employer	Initial Salary	Benefits %	Pre-Trial Growth	Post-Trial Growth
06/22/20	03/07/30	Director	IBM	\$347,987	44.38%	3.00%	3.00%

Actual and Projected Employment With Damages

From	To	Occupation	Employer	Initial Salary	Benefits %	Pre-Trial Growth	Post-Trial Growth
06/23/20	09/14/20	Unemployed	Colorado DOL	\$29,252	0.00%	0.00%	0.00%
09/15/20	12/31/20	VP of Product Management and BD	EOX Vantage	\$200,000	44.38%	0.00%	0.00%
09/15/20	09/16/20	VP of Product Management and BD	EOX Vantage - Signing Bonus	\$12,000	0.00%	0.00%	0.00%
01/01/21	05/15/21	VP of Product Management and BD	EOX Vantage	\$71,623	44.38%	0.00%	0.00%
05/16/21	07/19/21	Unemployed	Colorado DOL	\$29,252	0.00%	0.00%	0.00%
07/20/21	12/31/21	VP of Product	Section	\$105,866	44.38%	0.00%	0.00%
01/01/22	03/07/30	VP of Product	Section	\$225,000	44.38%	0.00%	3.00%

Pre-Trial Lost Income

Period	From	To	Income	Benefits	Total Uninjured	Income	Benefits	Total Injured	Loss	Present Value
1	06/22/20	12/31/20	\$183,501	\$81,438	\$264,939	\$77,730	\$26,191	\$103,921	\$161,018	\$166,647
2	01/01/21	12/31/21	\$358,427	\$159,070	\$517,496	\$182,698	\$78,770	\$261,468	\$256,028	\$259,858
3	01/01/22	09/30/22	\$274,076	\$121,635	\$395,711	\$168,288	\$74,686	\$242,974	\$152,738	\$152,738
Total	06/22/20	09/30/22	\$816,004	\$362,143	\$1,178,147	\$428,716	\$179,647	\$608,363	\$569,784	\$579,243

Post-Trial Lost Income

Period	From	To	Income	Benefits	Total Uninjured	Income	Benefits	Total Injured	Loss	Present Value
1	10/01/22	12/31/22	\$93,053	\$41,297	\$134,351	\$56,712	\$25,169	\$81,881	\$52,469	\$52,141
2	01/01/23	12/31/23	\$380,255	\$168,757	\$549,012	\$231,750	\$102,851	\$334,601	\$214,411	\$207,904
3	01/01/24	12/31/24	\$391,662	\$173,820	\$565,482	\$238,703	\$105,936	\$344,639	\$220,844	\$209,072
4	01/01/25	12/31/25	\$403,412	\$179,034	\$582,447	\$245,864	\$109,114	\$354,978	\$227,469	\$210,366
5	01/01/26	12/31/26	\$415,515	\$184,405	\$599,920	\$253,239	\$112,388	\$365,627	\$234,293	\$211,780
6	01/01/27	12/31/27	\$427,980	\$189,938	\$617,918	\$260,837	\$115,759	\$376,596	\$241,322	\$213,313
7	01/01/28	12/31/28	\$440,820	\$195,636	\$636,455	\$268,662	\$119,232	\$387,894	\$248,561	\$214,962
8	01/01/29	12/31/29	\$454,044	\$201,505	\$655,549	\$276,722	\$122,809	\$399,531	\$256,018	\$216,726
9	01/01/30	12/31/30	\$82,541	\$36,632	\$119,173	\$50,305	\$22,326	\$72,631	\$46,542	\$38,582
Total	10/01/22	01/14/42	\$3,089,283	\$1,371,024	\$4,460,306	\$1,882,793	\$835,584	\$2,718,377	\$1,741,929	\$1,574,847

Other Damages

Summary of Other Damages

Start	End	Type*	Description	Vendor	Amount	Growth	Occurs
06/22/20	06/22/20	E	Forfeit of Unvested RSU's	IBM	\$94,071.00		Once

* E = Expense, R = Reimbursement

Pre-Trial Other Damages

Period	From	To	Loss of Unvested RSU's	Present Value
1	06/22/20	12/31/20	\$94,071	\$97,360
Total	06/22/20	09/30/22	\$94,071	\$97,360

Michael Sauro

General Information

Damages Date: 6/30/2018
 Trial or Settlement Date: 10/1/2022
 Interest Rate (Past Damages): 2.00%
 Discount Rate (Future Damages): 2.50%
 Periodic Compounding: Annually
 Present Value Interest Calculation: Simple Interest

Plaintiff Information

Gender: Male
 Race: White
 Birth Date: 11/8/1954
 Age at Injury: 63.64
 Projected Retirement Age*: 70.00
 Projected Age at Death**: 82.69

- * Mr. Sauro has stated that it was his intention to remain employed by IBM until age 70.
- ** Life expectancy calculated for white men. Study used: United States Life Tables, 2017 by Elizabeth Arias, Ph.D., and Jiaquan Xu, M.D., Division of Vital Statistics, National Vital Statistics Reports, Volume 68, Number 7, June 24, 2019.

Damages Summary

	Future Values		Present Values	
	Pre-Trial	Post-Trial	Pre-Trial	Post-Trial
Lost Income	\$870,357	\$433,954	\$899,606	\$417,991
Lost Fringe Benefits	\$388,861	\$192,589	\$401,918	\$185,505
Subtotal: Lost Earnings	\$1,259,217	\$626,542	\$1,301,524	\$603,496
Other Damages	\$0	\$0	\$0	\$0
Total Damages	\$1,259,217	\$626,542	\$1,301,524	\$603,496
Grand Total Damages	\$1,885,760		\$1,905,020	

Lost Income

Projected Employment Without Damages

From	To	Occupation	Employer	Initial Salary	Benefits %	Pre-Trial Growth	Post-Trial Growth
06/30/18	11/08/24	Director	IBM	\$205,934	44.38%	0.00%	0.00%

Actual and Projected Employment With Damages

From	To	Occupation	Employer	Initial Salary	Benefits %	Pre-Trial Growth	Post-Trial Growth
01/01/20	12/31/20	Nonemployee Compensation	Sedera, Inc.	\$4,250	0.00%	0.00%	0.00%
01/01/21	12/31/21	Nonemployee Compensation	Sedera, Inc.	\$1,600	0.00%	0.00%	0.00%

Pre-Trial Lost Income

Period	From	To	Income	Benefits	Total Uninjured	Income	Benefits	Total Injured	Loss	Present Value
1	06/30/18	12/31/18	\$104,378	\$46,323	\$150,700	\$0	\$0	\$0	\$150,700	\$161,997
2	01/01/19	12/31/19	\$205,934	\$91,394	\$297,328	\$0	\$0	\$0	\$297,328	\$313,668
3	01/01/20	12/31/20	\$205,934	\$91,394	\$297,328	\$4,250	\$0	\$4,250	\$293,078	\$303,323
4	01/01/21	12/31/21	\$205,934	\$91,394	\$297,328	\$1,600	\$0	\$1,600	\$295,728	\$300,151
5	01/01/22	09/30/22	\$154,027	\$68,357	\$222,385	\$0	\$0	\$0	\$222,385	\$222,385
Total	06/30/18	09/30/22	\$876,207	\$388,861	\$1,265,067	\$5,850	\$0	\$5,850	\$1,259,217	\$1,301,524

Post-Trial Lost Income

Period	From	To	Income	Benefits	Total Uninjured	Income	Benefits	Total Injured	Loss	Present Value
1	10/01/22	12/31/22	\$51,907	\$23,036	\$74,943	\$0	\$0	\$0	\$74,943	\$74,474
2	01/01/23	12/31/23	\$205,934	\$91,394	\$297,328	\$0	\$0	\$0	\$297,328	\$288,303
3	01/01/24	12/31/24	\$176,113	\$78,159	\$254,272	\$0	\$0	\$0	\$254,272	\$240,719
Total	10/01/22	07/18/37	\$433,954	\$192,589	\$626,542	\$0	\$0	\$0	\$626,542	\$603,496

Charles Townsley

General Information

Damages Date:	6/16/2018
Trial or Settlement Date:	10/1/2022
Interest Rate (Past Damages):	2.00%
Discount Rate (Future Damages):	2.50%
Periodic Compounding:	Annually
Present Value Interest Calculation:	Simple Interest

Plaintiff Information

Gender:	Male
Race:	White
Birth Date:	7/15/1961
Age at Injury:	56.92
Projected Retirement Age*:	67.39
Projected Age at Death**:	81.08

* Worklife expectancy calculated for all men active in the workforce with a master's degree. Study used: The Markov Process Model of Labor Force Activity: Extended Tables of Central Tendency, Shape, Percentile Points, and Bootstrap Standard Errors, Gary R. Skoog, James E. Ciecka and Kurt V. Krueger, Journal of Forensic Economics, 22(2), 2011.

** Life expectancy calculated for white men. Study used: United States Life Tables, 2017 by Elizabeth Arias, Ph.D., and Jiaquan Xu, M.D., Division of Vital Statistics, National Vital Statistics Reports, Volume 68, Number 7, June 24, 2019.

Damages Summary

	Future Values		Present Values	
	Pre-Trial	Post-Trial	Pre-Trial	Post-Trial
Lost Income	\$865,193	\$856,297	\$900,132	\$789,914
Lost Fringe Benefits	\$398,655	\$380,025	\$414,995	\$350,564
Subtotal: Lost Earnings	\$1,263,849	\$1,236,322	\$1,315,127	\$1,140,478
Other Damages	\$0	\$0	\$0	\$0
Total Damages	\$1,263,849	\$1,236,322	\$1,315,127	\$1,140,478
Grand Total Damages	\$2,500,171		\$2,455,604	

Lost Income

Projected Employment Without Damages

From	To	Occupation	Employer	Initial Salary	Benefits %	Pre-Trial Growth	Post-Trial Growth
06/16/18	12/04/28	Manager	IBM	\$350,000	44.38%	0.00%	0.00%

Actual and Projected Employment With Damages

From	To	Occupation	Employer	Initial Salary	Benefits %	Pre-Trial Growth	Post-Trial Growth
06/16/18	12/31/18	Unemployed	Texas Workforce Commission	\$2,964	0.00%	0.00%	
01/01/19	12/31/19	Contractor	APC Workforce Solutions II LLC	\$24,192	0.00%	0.00%	0.00%
01/01/19	12/31/19	Unemployed	Texas Workforce Commission	\$5,928	0.00%	0.00%	0.00%
01/01/19	12/31/19	Manager	Oracle	\$91,741	44.38%	0.00%	0.00%
01/01/20	12/31/20	Manager	Oracle	\$180,515	44.38%	0.00%	0.00%
01/01/21	12/04/28	Manager	Oracle	\$189,977	44.38%	0.00%	3.00%

Pre-Trial Lost Income

Period	From	To	Income	Benefits	Total Uninjured	Income	Benefits	Total Injured	Loss	Present Value
1	06/16/18	12/31/18	\$190,822	\$84,687	\$275,509	\$2,964	\$0	\$2,964	\$272,545	\$292,974
2	01/01/19	12/31/19	\$350,000	\$155,330	\$505,330	\$121,861	\$40,715	\$162,576	\$342,754	\$361,592
3	01/01/20	12/31/20	\$350,000	\$155,330	\$505,330	\$180,515	\$80,113	\$260,628	\$244,702	\$253,257
4	01/01/21	12/31/21	\$350,000	\$155,330	\$505,330	\$189,977	\$84,312	\$274,289	\$231,041	\$234,497
5	01/01/22	09/30/22	\$261,781	\$116,178	\$377,959	\$142,092	\$63,061	\$205,153	\$172,806	\$172,806
Total	06/16/18	09/30/22	\$1,502,603	\$666,855	\$2,169,458	\$637,409	\$268,200	\$905,609	\$1,263,849	\$1,315,127

Post-Trial Lost Income

Period	From	To	Income	Benefits	Total Uninjured	Income	Benefits	Total Injured	Loss	Present Value
1	10/01/22	12/31/22	\$88,219	\$39,152	\$127,371	\$48,243	\$21,410	\$69,653	\$57,718	\$57,357
2	01/01/23	12/31/23	\$350,000	\$155,330	\$505,330	\$197,140	\$87,491	\$284,630	\$220,700	\$214,001
3	01/01/24	12/31/24	\$350,000	\$155,330	\$505,330	\$203,054	\$90,115	\$293,169	\$212,161	\$200,853
4	01/01/25	12/31/25	\$350,000	\$155,330	\$505,330	\$209,145	\$92,819	\$301,964	\$203,366	\$188,075
5	01/01/26	12/31/26	\$350,000	\$155,330	\$505,330	\$215,420	\$95,603	\$311,023	\$194,307	\$175,636
6	01/01/27	12/31/27	\$350,000	\$155,330	\$505,330	\$221,882	\$98,471	\$320,354	\$184,976	\$163,507
7	01/01/28	12/31/28	\$324,180	\$143,871	\$468,052	\$211,218	\$93,739	\$304,957	\$163,094	\$141,048
Total	10/01/22	08/14/42	\$2,162,400	\$959,673	\$3,122,072	\$1,306,102	\$579,648	\$1,885,750	\$1,236,322	\$1,140,478

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	Case No. 1:20-cv-00969-DAE
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	

**DEFENDANT INTERNATIONAL BUSINESS MACHINES CORPORATION'S
MOTION TO EXCLUDE EXPERT REPORT AND TESTIMONY OF MARK RAMBIN**

EXHIBIT C to Exhibit 1

Dwight Steward, Ph.D. - 5/13/2022

1	1	3
1	IN THE UNITED STATES DISTRICT COURT	1
2	FOR THE WESTERN DISTRICT OF TEXAS	2
3	AUSTIN DIVISION	3
4	CHARLES TOWNSLEY, §	4
5	MICHAEL SAURO, WALTER §	5
6	NOFFSINGER, ROSA §	6
7	DAVIDSON, MICHAEL KELLY, §	7
8	TITON HOQUE, JANET §	8
9	GELPHMAN, THANH DO, §	9
10	§	10
11	§	11
12	§	12
13	§	13
14	§	14
15	§	15
16	§	16
17	§	17
18	§	18
19	§	19
20	§	20
21	§	21
22	§	22
23	§	23
24	§	24
25	§	25
1	2	4
1	ORAL AND VIDEOTAPED DEPOSITION OF DWIGHT	1
2	STEWARD, Ph.D., produced as a witness at the instance	2
3	of the PLAINTIFFS, and duly sworn, was taken in the	3
4	above-styled and numbered cause on May 13, 2022, from	4
5	9:30 a.m. to 3:35 p.m., before Brenda J. Wright, RPR,	5
6	CSR in and for the State of Texas, reported remotely	6
7	by machine shorthand, pursuant to the Federal Rules of	7
8	Civil Procedure and the provisions stated on the	8
9	record or attached herein.	9
10		10
11		11
12		12
13		13
14		14
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16		16
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19		19
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25		25
1	2	4
1	STIPULATIONS	1
2	The attorneys for all parties present stipulate	2
3	and agree to the following items:	3
4		4
5	That the deposition of DWIGHT STEWARD, Ph.D. is	5
6	being taken pursuant to Notice;	6
7		7
8	That the deposition is being taken pursuant to	8
9	the Federal Rules of Civil Procedure;	9
10		10
11	That the original transcript will be submitted	11
12	to the witness' attorney; EDWARD M. "TED" SMITH;	12
13		13
14	That the witness or the witness' attorney will	14
15	return the signed transcript to the court reporter	15
16	within 30 days of the date the transcript is provided	16
17	to the witness' attorney. If not returned, the	17
18	witness may be deemed to have waived the right to make	18
19	the changes, and an unsigned copy may be used as	19
20	though signed.	20
21		21
22		22
23		23
24		24
25		25

WRIGHT WATSON & ASSOCIATES

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Dwight Steward, Ph.D. - 5/13/2022

<p>1 INDEX</p> <p>2</p> <p>3 PAGE</p> <p>4 APPEARANCES 3</p> <p>5 STIPULATIONS 4</p> <p>6</p> <p>7 DWIGHT STEWARD, Ph.D.</p> <p>8 Examination by Mr. Pringle 6</p> <p>9 Changes and Corrections 248</p> <p>10 Signature Page 249</p> <p>11 Reporter's Certificate 250</p> <p>12</p> <p>13 EXHIBITS</p> <p>14 EXHIBIT DESCRIPTION PAGE</p> <p>15 NO. MARKED</p> <p>16 1 Dr. Steward's report - Charles 45</p> <p>17 2 Townsley</p> <p>18 3 Dr. Steward's report - Walter 98</p> <p>19 4 Noffsinger</p> <p>20 5 Dr. Steward's report - Michael 140</p> <p>21 6 Sauro</p> <p>22 7 Dr. Steward's report - Thanh Do 168</p> <p>23 8 Dr. Steward's report - Michael 195</p> <p>24 9 Kelly</p> <p>25 6 Dr. Steward's report - Rosa 215</p> <p>Davidson</p> <p>7 Dr. Steward's report - Titon Hoque 222</p> <p>8 Dr. Steward's report - Janet 230</p> <p>Gelphman</p>	<p>7</p> <p>1 before?</p> <p>2 A. Yes, sir, I have.</p> <p>3 Q. Any idea how many depositions you've given?</p> <p>4 A. Upward of 300 depositions.</p> <p>5 Q. All right. I'm going to go over real</p> <p>6 briefly the deposition warnings that you've heard</p> <p>7 upwards of 300 times, so bear with me.</p> <p>8 You understand that you're under oath?</p> <p>9 A. Yes, sir, I do.</p> <p>10 Q. And so it's important that you understand</p> <p>11 all of my questions. If I ever ask you a question</p> <p>12 that's unclear to you, will you ask me to rephrase it?</p> <p>13 A. Yes.</p> <p>14 Q. All right. It's important not to talk over</p> <p>15 each other, especially in a Zoom format such as what</p> <p>16 we're enjoying today. So if I ever cut you off, you</p> <p>17 let me know, and I'll do the same. Agreed?</p> <p>18 A. Yes.</p> <p>19 Q. If you answer a question, I will have</p> <p>20 understood or assumed that you understood it at the</p> <p>21 time it was asked. Is that fair?</p> <p>22 A. Yes.</p> <p>23 Q. When were you hired in this case, sir?</p> <p>24 A. I don't recall the exact date. I believe it</p> <p>25 was earlier -- earlier this year -- earlier this year,</p>
<p>6</p> <p>1 THE VIDEOGRAPHER: We're on the record</p> <p>2 May 13th, 2022, and the time is 9:32. Here begins</p> <p>3 Tape 1 of the video deposition of</p> <p>4 Doctor Dwight Steward. This video deposition is being</p> <p>5 held via Zoom video conferencing.</p> <p>6 Will counsel please identify yourselves</p> <p>7 for the record.</p> <p>8 MR. PRINGLE: Ross Pringle representing</p> <p>9 the plaintiffs.</p> <p>10 MR. SMITH: Ted Smith representing</p> <p>11 defendant IBM.</p> <p>12 THE VIDEOGRAPHER: Will the court</p> <p>13 reporter please swear in the witness.</p> <p>14 DWIGHT STEWARD, Ph.D.,</p> <p>15 having been first duly sworn, testified as follows:</p> <p>16 EXAMINATION</p> <p>17 BY MR. PRINGLE:</p> <p>18 Q. Would you please state your name, sir?</p> <p>19 A. Dwight Steward.</p> <p>20 Q. And what is your current business address?</p> <p>21 A. It is 1920 East Riverside Drive, A-120,</p> <p>22 Number 260, Austin, Texas, 78741.</p> <p>23 Q. And what is at that office?</p> <p>24 A. That's just a mailing address.</p> <p>25 Q. Okay. And have you given depositions</p>	<p>8</p> <p>1 2022.</p> <p>2 Q. 2022. And how were you contacted?</p> <p>3 A. I don't recall. But I -- yeah, probably by</p> <p>4 email, though, but I don't recall specifically how I</p> <p>5 was contacted.</p> <p>6 Q. Do you remember who -- who contacted you?</p> <p>7 A. I can't remember if it was -- or recall if</p> <p>8 it was Ted Smith or not, but I believe it was</p> <p>9 Ted Smith.</p> <p>10 Q. Okay. And what were you hired to do?</p> <p>11 A. I was hired to perform an analysis and to</p> <p>12 review the plaintiffs' experts' reports.</p> <p>13 Q. Perform an analysis and to do what?</p> <p>14 A. And review the plaintiffs' expert reports.</p> <p>15 Q. And have you prepared a series of reports</p> <p>16 concerning your work in this case?</p> <p>17 A. Yes, sir, I have.</p> <p>18 Q. And those reports, I believe, were dated in</p> <p>19 the middle of March 2022. Correct?</p> <p>20 A. Yes, sir, that's right.</p> <p>21 Q. Okay. Are all of your opinions contained</p> <p>22 and referenced in those reports?</p> <p>23 A. My general opinions and impressions up to</p> <p>24 date are -- to date are contained in those reports.</p> <p>25 Q. And all of the documents and sources</p>

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Dwight Steward, Ph.D. - 5/13/2022

<p style="text-align: right;">17</p> <p>1 Q. All right. All right. Any other things</p> <p>2 that you recall being discussed in that 20 to 30 --</p> <p>3 20- to 30-minute conversation yesterday other than</p> <p>4 discussion about fringe benefits calculations and the</p> <p>5 fact that Mr. Rambin hasn't made any changes to his</p> <p>6 report?</p> <p>7 A. Nothing specific, I guess, other than --</p> <p>8 because you mentioned fringe benefits, but it's my</p> <p>9 understanding that Mr. Rambin believes that if you --</p> <p>10 you know, once they've got comparable benefits,</p> <p>11 they've got comparable benefits and they should be</p> <p>12 netted out. That's kind of what I took away from</p> <p>13 that. But that's part of the fringe benefits part</p> <p>14 that I -- that's part of the fringe benefits response</p> <p>15 that I talked about a couple of seconds ago.</p> <p>16 Q. Okay. Was there any other aspects of his</p> <p>17 testimony that were discussed yesterday that you can</p> <p>18 recall about the fringe benefits and -- well, the</p> <p>19 fringe benefits?</p> <p>20 A. Nothing that I can think of right now, no.</p> <p>21 Q. What did the lawyers tell you about</p> <p>22 Mr. Rambin's calculation of fringe benefits?</p> <p>23 A. They told me how he testified in terms of</p> <p>24 how he made the calculation. He -- they told me what</p> <p>25 table and what lines that he got his numbers from.</p>	<p style="text-align: right;">19</p> <p>1 Q. So is it your understanding that what</p> <p>2 Mr. Rambin did with the fringe benefits calculation</p> <p>3 is, he converted the fringe benefit percentage of the</p> <p>4 total to a fringe benefit percentage of the wages?</p> <p>5 MR. SMITH: Objection. Form.</p> <p>6 A. I don't understand your question, sir.</p> <p>7 Q. (BY MR. PRINGLE) You don't understand that?</p> <p>8 A. No, sir, I don't.</p> <p>9 Q. Okay. How are the fringe benefits listed in</p> <p>10 the table that you referenced?</p> <p>11 A. Well, in the table, it's actually multiple</p> <p>12 tables. If you're talking about the ones he actually</p> <p>13 used --</p> <p>14 Q. Yes.</p> <p>15 A. How were they listed? Well, they're listed</p> <p>16 in terms of -- it goes across, it shows an average</p> <p>17 salary. So what it is, is it's based off of a survey,</p> <p>18 and so you -- what he's done is they calculate the</p> <p>19 average wage for all those employees in that</p> <p>20 particular category of employment or that occupation.</p> <p>21 So that's one of the columns.</p> <p>22 And then as you go further over, it has</p> <p>23 another column that says, Total Benefits. And total</p> <p>24 benefits is equal to a whole range of other</p> <p>25 subcategories. So, for example, it has supplemental</p>
<p style="text-align: right;">18</p> <p>1 Q. What did they tell you?</p> <p>2 A. What did they tell me? That he used a</p> <p>3 document, the ECEC, from December 2020, which is what</p> <p>4 he references in this report, and he went through and</p> <p>5 described how he calculated his fringe benefit</p> <p>6 multiplier from one of the tables. I don't recall the</p> <p>7 table number now, but I have it printed out.</p> <p>8 Q. What's your understanding of how he</p> <p>9 calculated the fringe benefit number, based on your</p> <p>10 conversation yesterday?</p> <p>11 A. Sure. Well, I mean, I just have to be</p> <p>12 careful in terms of, this is how he calculated his</p> <p>13 fringe benefit multiplier that he uses throughout his</p> <p>14 analysis. But my understanding is, he uses one of the</p> <p>15 tables, and I would have to pull up exactly which one</p> <p>16 it was, but it's a general number for, I think,</p> <p>17 management, and he uses that number for all eight</p> <p>18 plaintiffs.</p> <p>19 And he uses two different numbers, one</p> <p>20 which is the average salary, which I guess all</p> <p>21 workers, and then he has the average total cost of</p> <p>22 benefits for all those workers. And basically he</p> <p>23 divides the average cost of total benefits by the</p> <p>24 average wage of all of those workers in that class and</p> <p>25 comes up with a benefit multiplier of 44.38 percent.</p>	<p style="text-align: right;">20</p> <p>1 pay, it has vacation pay, it has insurance, it has</p> <p>2 legally required benefits. And so there's a dollar</p> <p>3 amount that's attachment to each of those.</p> <p>4 And so what he does is, he looks at the</p> <p>5 total amount of those benefits, the sum total of all</p> <p>6 of those benefits, and divides that by the average</p> <p>7 wage for the people in that category. And so those</p> <p>8 are the average costs of those benefits, he divides it</p> <p>9 by the average cost of those -- by the average wage</p> <p>10 for those employees.</p> <p>11 Q. In the table that Mr. Rambin reviewed --</p> <p>12 referenced and that you reviewed yesterday, are the</p> <p>13 percentage of benefits expressed as a percentage of</p> <p>14 the total compensation?</p> <p>15 A. I can pull that table up. But the table</p> <p>16 that -- that he used shows dollars, and I believe</p> <p>17 there is percentage, but there's a dollar -- there's a</p> <p>18 dollar amount and there's a percentage amount.</p> <p>19 Q. Right. And are the percentage amounts of</p> <p>20 the fringe benefits expressed as a percentage of the</p> <p>21 entire compensation, including the fringe benefits?</p> <p>22 A. I would have to look. It may be. I don't</p> <p>23 recall.</p> <p>24 Q. Please do look and verify that if you would.</p> <p>25 A. Sure.</p>

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<p style="text-align: right;">41</p> <p>1 Q. All right. Would you be able to express an 2 opinion as to the financial detriment that each 3 plaintiff suffered in terms of a dollar amount as a 4 result of their termination from IBM?</p> <p>5 A. I don't know. I would have to -- I have not 6 been asked to do that. I have a -- obviously, I would 7 know how to go about that. But some of the 8 individuals, I don't know if the data would be 9 completely there, because I know some individuals the 10 data is not there all the way. So the short answer is 11 I don't know completely what that would look like.</p> <p>12 Q. You don't know whether you would be able to 13 calculate damages for these eight plaintiffs. Is that 14 right?</p> <p>15 A. Yeah, that's what it said because, like I 16 said, some of these individual I know that the data is 17 not complete yet, but I know the methodology that I 18 would use. But that's, again, not something I've been 19 asked to do.</p> <p>20 Q. All right. Let's -- are you critical of 21 Mr. Rambin's methodology?</p> <p>22 A. Yes.</p> <p>23 Q. Can you list your criticisms of his 24 methodology?</p> <p>25 A. We would really have to go person by person.</p>	<p style="text-align: right;">43</p> <p>1 what did they try to do when they -- when they were 2 terminated. That's a big part. That's what makes it 3 different from an injury case, because there, you 4 know, that's when you use a vocational person.</p> <p>5 Here you want to know, what did they do 6 in terms of, you know, to get a job. Did they go -- 7 how did they serve. So that's a big part that he 8 doesn't do.</p> <p>9 And then there's just a huge 10 overstatement in those fringe benefits. There's a 11 complete double counting of a number of things. And 12 his fringe benefit multiplier includes things that 13 none of these individuals actually had in terms of 14 benefits, and so that results in a really -- when it 15 should be applied or potentially applied, it's 16 ridiculously overstated. In a number of situations, 17 it really should be no damage whatsoever in terms of 18 fringe benefits. So that's the overarching kind of 19 theme, but there are a lot of things that, you know, 20 go into that.</p> <p>21 Q. And you also criticize his assumption 22 regarding retirement age?</p> <p>23 A. Well, that actually was my very first thing. 24 It isn't -- that's my point. This isn't a retirement 25 issue. It's how long would you be with that employer.</p>
<p style="text-align: right;">42</p> <p>1 But I'm somewhat -- I could give you some general 2 impressions, but I really -- it's important to realize 3 that each case is different, every individual here in 4 terms of all eight, they're all different in terms of 5 what the issue is. But generally, in terms of what he 6 does -- and, again, it just really depends on the 7 person, but a lot of it -- you've got two things.</p> <p>8 One, on the left-hand side there's an issue in terms 9 of how he calculates what the IBM wages would be going 10 into the future.</p> <p>11 There is the really big disconnect in 12 terms of how that should be calculated in terms of how 13 far that would go. It's very clear, in terms of 14 employment, that you have to consider -- it's not work 15 life that's relevant in an employment case when you're 16 doing the damages, it's how long they would have 17 worked at that employer. And those are completely 18 separate issues.</p> <p>19 And so Mr. Rambin's approach of using 20 this Markov model is completely incorrect and that 21 permeates through all of his analyses. That's one 22 that goes across.</p> <p>23 The other thing that goes across, is 24 you have to look at the mitigation attempts of the 25 individuals in an employment case, you have to see</p>	<p style="text-align: right;">44</p> <p>1 But for these individuals, you definitely want to look 2 at -- because he talks about retirement. Yeah, so 3 that's one of the things that you -- that I take issue 4 with in terms of how long they would be employed. 5 Sometimes he just uses arbitrary 70, because I guess 6 they report it to him. Other times he uses an 7 academic study which, again, is not used in an 8 employment setting. That's for injury cases, that's 9 not relevant to these individuals.</p> <p>10 Q. Is retirement age at all relevant in any of 11 these analyses?</p> <p>12 A. Yes.</p> <p>13 Q. How is it relevant?</p> <p>14 A. Well, there's a couple of people that 15 clearly are, at the time of what he says is the 16 injury, were past the retirement age. And, in fact, I 17 believe there was one individual who reports actually 18 being retired. So, yes, retirement age, I can think 19 of two individuals where retirement age would be 20 something that Mr. Rambin should consider.</p> <p>21 Q. Is it your opinion that the plaintiff or 22 plaintiffs who were past retirement age at the time of 23 discharge suffered no damages?</p> <p>24 A. Again, we would have to talk about each one 25 separately. I'm not going to -- I can't give you</p>

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<p style="text-align: right;">81</p> <p>1 asking them for retirement data.</p> <p>2 Q. Would it be fair to say that you haven't</p> <p>3 asked for that because you haven't been asked to opine</p> <p>4 about the average retirement age?</p> <p>5 MR. SMITH: Objection. Form.</p> <p>6 Q. (BY MR. PRINGLE) Or ages?</p> <p>7 A. I really wouldn't say that's fair, because I</p> <p>8 really have described why I did not ask for that. And</p> <p>9 again, it's -- I've already described it. What is</p> <p>10 fair is kind of how I've described it in the last</p> <p>11 couple of questions. That's not necessarily -- that's</p> <p>12 not necessary for what I'm doing. And that's why I</p> <p>13 did not ask for it. Because again, those are the</p> <p>14 things that Mr. Rambin would need to do to make his</p> <p>15 analysis accurate and scientifically sound.</p> <p>16 Q. And it's not necessary because it -- you</p> <p>17 haven't been asked to opine about the specific</p> <p>18 retirement age for these plaintiffs, specific</p> <p>19 retirement age. Correct?</p> <p>20 A. No. It's not necessary for the reasons that</p> <p>21 I just mentioned. Because again, it's not necessary</p> <p>22 because that's -- because those are the things that</p> <p>23 Mr. Rambin does. And again, it doesn't have anything</p> <p>24 to do with the second part. It just has to do with</p> <p>25 Mr. Rambin. That's it.</p>	<p style="text-align: right;">83</p> <p>1 provide the average retirement age for plaintiffs</p> <p>2 similarly situated than these plaintiffs if you or</p> <p>3 Mr. Rambin asked for it. You don't know one way or</p> <p>4 the other, do you?</p> <p>5 A. I don't know one way or another.</p> <p>6 Q. You criticize Mr. Rambin -- and let me see.</p> <p>7 I'm looking at paragraph 24 on pages 9 and 10 of your</p> <p>8 report. And you're critical of Mr. Rambin's use of</p> <p>9 the labor market data that he references because it</p> <p>10 includes jobs such as store clerks, truck drivers,</p> <p>11 administrative assistants, housekeepers, bartenders.</p> <p>12 And those jobs are clearly different than the ones</p> <p>13 held by Mr. Townsley. Is that correct?</p> <p>14 A. You read it -- close. I mean, it's not --</p> <p>15 there's no because. These were just examples of the</p> <p>16 issues related to his -- his use of this. These are</p> <p>17 just examples. This is not the sum total of why it's</p> <p>18 wrong.</p> <p>19 Q. I know that. I know that's your opinion.</p> <p>20 My question, though, is, just is that one of your</p> <p>21 criticisms?</p> <p>22 A. I'm sorry. Was what one of my criticisms?</p> <p>23 Q. That the labor market data that Mr. Rambin</p> <p>24 used included those various other job descriptions</p> <p>25 unlike the job held by Mr. Townsley?</p>
<p style="text-align: right;">82</p> <p>1 Q. And because you haven't been asked to do</p> <p>2 that, you don't feel a need to request that</p> <p>3 information. Correct?</p> <p>4 MR. SMITH: Objection. Form. It's</p> <p>5 been asked and answered about eight times.</p> <p>6 MR. PRINGLE: Yeah. And I'm not really</p> <p>7 understanding the answer. I don't understand the</p> <p>8 answer at all.</p> <p>9 Q. (BY MR. PRINGLE) What is the answer?</p> <p>10 A. Again --</p> <p>11 MR. SMITH: Objection. Form.</p> <p>12 A. -- it has absolutely nothing to do with the</p> <p>13 fact that I wasn't asked to do this. Again, it has to</p> <p>14 do with Mr. Rambin. And so what I'm saying is, again,</p> <p>15 so that -- he needs to get that type of information.</p> <p>16 And I've laid that out. There's no reason for me to</p> <p>17 ask for the information that Mr. Rambin needs in</p> <p>18 this -- in this case. That's it. It had nothing with</p> <p>19 what I was asked to do.</p> <p>20 If I were asked to do a different</p> <p>21 assignment, I'm sure I would ask for different items,</p> <p>22 but it has nothing to do with the second aspect of</p> <p>23 what you're saying.</p> <p>24 Q. (BY MR. PRINGLE) And as we sit here today,</p> <p>25 you don't know if IBM would have the capability to</p>	<p style="text-align: right;">84</p> <p>1 A. My criticism is that this data -- that the</p> <p>2 calculation that he's even using is based on data from</p> <p>3 job titles that are not -- that are disparate from</p> <p>4 what Mr. Townsley was doing, for example, and I give</p> <p>5 those as examples. That's my opinion.</p> <p>6 Q. So to meet that criticism, you would -- you</p> <p>7 would be less critical if he had used the data from</p> <p>8 jobs similar to Mr. Townsley. Correct?</p> <p>9 A. Absolutely not. And I'm very clear, this</p> <p>10 whole approach is completely wrong because, like I</p> <p>11 just described before, this is work life data, so it's</p> <p>12 not relevant at all. Because what this shows, this is</p> <p>13 for people that go in and out of the work force, not</p> <p>14 from an employer, so the whole use of it is completely</p> <p>15 wrong. This is just another example to show the other</p> <p>16 level of how wrong it is. So, no, by means is that</p> <p>17 only reason why this is wrong.</p> <p>18 Q. Let's go on to paragraph 25. That's where</p> <p>19 you talk about the fringe benefits. Mr. Rambin's</p> <p>20 calculated employer provided fringe benefits of</p> <p>21 44.83 percent of the salary that Mr. Townsley received</p> <p>22 at IBM. And you disagree with that. Correct?</p> <p>23 A. I disagree -- I don't disagree that he makes</p> <p>24 44.83. That's what he uses. I disagree -- it's</p> <p>25 inappropriate in terms of the way it's calculated, and</p>

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<p style="text-align: right;">85</p> <p>1 in this particular case, it's just wrong.</p> <p>2 Q. It's wrong how?</p> <p>3 A. Okay. There are a couple of different ways.</p> <p>4 And again, this criticism, as what I've described</p> <p>5 before, is different for each individual. This one is</p> <p>6 particularly, I guess, egregious -- is a big problem</p> <p>7 because he has the same -- he -- the plaintiff has the</p> <p>8 same benefits at Oracle that he did at -- at IBM. So</p> <p>9 essentially there's very little difference or really</p> <p>10 none that should even be attributed. So that's one</p> <p>11 thing.</p> <p>12 So, for example, with health care, he</p> <p>13 has health care at Oracle, he had health care at IBM.</p> <p>14 That should not be part of any calculation.</p> <p>15 Mr. Rambin includes that. And that's actually a large</p> <p>16 part of that 44 percent. That's just wrong, so that</p> <p>17 should be out completely.</p> <p>18 This other part, for example, are</p> <p>19 legally required benefits like social security.</p> <p>20 That's like -- that's equal to about -- what is that?</p> <p>21 Like, 7 -- I think it's 6.5 percent, I think it is.</p> <p>22 But the issue with that is, it's capped, and so he --</p> <p>23 the way he does it is, he's assuming IBM is going to</p> <p>24 contribute more of social security than Oracle is.</p> <p>25 No. Because it's a maximum of 125,000, so it's the</p>	<p style="text-align: right;">87</p> <p>1 Q. All right. Mr. Rambin opines it's 44.83</p> <p>2 percent. Do you have an alternative percentage to</p> <p>3 offer the jury?</p> <p>4 A. I -- I could provide an alternative. And</p> <p>5 that's not even the issue here in terms of how this</p> <p>6 would be done. So, yes, I have an alternative in</p> <p>7 terms of how to calculate that. But I just described</p> <p>8 to you what that -- how you get there. So, yes, I</p> <p>9 have an alternative. But as I sit here, I don't have</p> <p>10 a number for you. I've described to you how you would</p> <p>11 get to it.</p> <p>12 Q. And as we sit here on the day of your</p> <p>13 deposition, you have not performed those calculations,</p> <p>14 you don't have any opinions -- specific opinions to</p> <p>15 offer the jury, do you?</p> <p>16 A. That's completely untrue. I just described</p> <p>17 to you everything. So in Townsley's case, the only</p> <p>18 possible -- the only possible fringe benefit --</p> <p>19 employer-provided fringe benefit that I would consider</p> <p>20 would be retirement, and that would be equal to</p> <p>21 potentially 3 percent of the difference between the --</p> <p>22 the base salaries. That's it. And so I am telling</p> <p>23 you that as we sit here. All the other stuff would be</p> <p>24 completely out. So that's what I would do here.</p> <p>25 Q. Do you say anywhere in your report that</p>
<p style="text-align: right;">86</p> <p>1 same. Again, that should be out.</p> <p>2 The other things are going with this</p> <p>3 calculation -- like I would just go through and just</p> <p>4 show you, he includes things in that 44 percent that</p> <p>5 Mr. -- that Mr. Townsley doesn't even have. And if</p> <p>6 you go to the actual ECEC document, you're going to</p> <p>7 see that. So, for example, he includes things like</p> <p>8 supplemental pay, overtime premiums, shift</p> <p>9 differentials. Clearly he didn't have any of those,</p> <p>10 but that's what's included in that 44.8 percent.</p> <p>11 He assumes, for example, that there's a</p> <p>12 vacation like -- salary, he's going to get an extra</p> <p>13 amount for that. That's included in this. And that's</p> <p>14 why you can't do it this way in the way that he's done</p> <p>15 it. At the end of the day, that's -- that's the big</p> <p>16 issue. And so for this particular case, those numbers</p> <p>17 would be -- if anything, the only possible difference</p> <p>18 could be in any retirement that you're looking at. So</p> <p>19 that's my criticism for this one.</p> <p>20 Q. As you sit here today, you don't have an</p> <p>21 opinion as to what the percentage of fringe benefits</p> <p>22 are with respect to Mr. Townsley's wage salary.</p> <p>23 What -- I guess, his earned salary and commissions?</p> <p>24 A. I'm sorry. I don't understand that at all,</p> <p>25 sir.</p>	<p style="text-align: right;">88</p> <p>1 Mr. Townsley's fringe benefits from IBM are only</p> <p>2 3 percent?</p> <p>3 A. No, I didn't say that here. I'm saying that</p> <p>4 I would look -- no. And I did not say that here.</p> <p>5 I've described to you -- you asked me if I have</p> <p>6 something to tell the jury and I just described that</p> <p>7 to you.</p> <p>8 Q. And do you -- have you offered your</p> <p>9 calculations in your report on how to do that?</p> <p>10 A. I have offered how you get to that, yes. I</p> <p>11 just completely explained to you the problems with</p> <p>12 that. So you take the problems, you fix the problems,</p> <p>13 you do it in the way that it's done in my field, and</p> <p>14 that's how you would come up with the number. And</p> <p>15 that's what I have laid out here and that's what I</p> <p>16 have laid out in other things that I have written, so</p> <p>17 it's here.</p> <p>18 Q. Can you direct me to those calculations in</p> <p>19 your report?</p> <p>20 A. I can direct you to the description of</p> <p>21 what's wrong with Mr. Rambin's report. And again, you</p> <p>22 take those out, then you get to what you would want to</p> <p>23 get to in terms of the number -- if you believe there</p> <p>24 was a number.</p> <p>25 Q. I'm familiar with your criticisms of him,</p>

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Dwight Steward, Ph.D. - 5/13/2022

<p style="text-align: right;">249</p> <p>1 SIGNATURE</p> <p>2</p> <p>3 I, DWIGHT STEWARD, Ph.D., have read the</p> <p>4 foregoing deposition and hereby affix my signature</p> <p>5 that same is true and correct, except as noted above.</p> <p>6</p> <p>7</p> <p>8 _____</p> <p>9 DWIGHT STEWARD, Ph.D.</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">251</p> <p>1 the oral deposition is a true record of the testimony</p> <p>2 given by the witness;</p> <p>3 I further certify that pursuant to Federal</p> <p>4 Rules of Civil Procedure, Rule 30(e)(1)(A) and (B) as</p> <p>5 well as Rule 30(e)(2) that the signature of the</p> <p>6 deponent:</p> <p>7 ___X___ was requested by the deponent and/or a</p> <p>8 party before completion of the deposition and is to be</p> <p>9 returned within 30 days from date of receipt of the</p> <p>10 transcript. If returned, the attached Changes and</p> <p>11 Corrections and Signature pages contain any changes</p> <p>12 and the reasons therefor;</p> <p>13 _____ was not requested by the deponent and/or a</p> <p>14 party before the completion of the deposition.</p> <p>15 That \$_____ is the deposition</p> <p>16 officer's charges for preparing the original</p> <p>17 deposition transcript and any copies of exhibits,</p> <p>18 charged to PLAINTIFFS;</p> <p>19 That pursuant to information given to the</p> <p>20 deposition officer at the time said testimony as</p> <p>21 taken, the following includes all parties of record:</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">250</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE WESTERN DISTRICT OF TEXAS</p> <p>3 AUSTIN DIVISION</p> <p>4 CHARLES TOWNSLEY, §</p> <p>5 MICHAEL SAURO, WALTER §</p> <p>6 NOFFSINGER, ROSA §</p> <p>7 DAVIDSON, MICHAEL KELLY, §</p> <p>8 TITON HOQUE, JANET §</p> <p>9 GELPHMAN, THANH DO, §</p> <p>10 § CASE NO.</p> <p>11 § 1:20-CV-00969-LY</p> <p>12 Plaintiffs, §</p> <p>13 §</p> <p>14 §</p> <p>15 §</p> <p>16 §</p> <p>17 §</p> <p>18 VS. §</p> <p>19 §</p> <p>20 §</p> <p>21 §</p> <p>22 §</p> <p>23 §</p> <p>24 §</p> <p>25 §</p> <p>INTERNATIONAL BUSINESS §</p> <p>MACHINES CORPORATION, §</p> <p>Defendant. §</p> <p>*****</p> <p>REPORTER'S CERTIFICATION</p> <p>ORAL AND VIDEOTAPED DEPOSITION OF</p> <p>DWIGHT STEWARD, Ph.D.</p> <p>VOLUME 1</p> <p>May 13, 2022</p> <p>*****</p> <p>I, BRENDA J. WRIGHT, Certified Shorthand</p> <p>Reporter in and for the State of Texas, hereby certify</p> <p>to the following:</p> <p>That the witness, DWIGHT STEWARD, Ph.D., was</p> <p>duly sworn by the officer and that the transcript of</p>	<p style="text-align: right;">252</p> <p>1 For the Plaintiffs:</p> <p>2 Mr. Ross Pringle</p> <p>3 WRIGHT & GREENHILL, P.C.</p> <p>4 900 Congress Avenue</p> <p>5 Suite 500</p> <p>6 Austin, Texas 78701-2496</p> <p>7 512-476-4600/512-476-5382 (fax)</p> <p>8 hcoughlin@w-g.com</p> <p>9 scooke@w-g.com</p> <p>10 cpierce@w-g.com</p> <p>11 rpringle@w-g.com</p> <p>12 lgobellan@w-g.com</p> <p>13 For the Defendant:</p> <p>14 Mr. Edward M. "Ted" Smith</p> <p>15 CORNELL SMITH MIERL BRUTOCAO BURTON, LLP</p> <p>16 1607 West Avenue</p> <p>17 Austin, Texas 78701</p> <p>18 512-328-1540</p> <p>19 tsmith@cornellsmith.com</p> <p>20 alin@cornellsmith.com</p> <p>21 abroadaway@cornellsmith.com</p> <p>22 I further certify that I am neither attorney</p> <p>23 nor counsel for nor related to nor employed by any of</p> <p>24 the parties to the action in which this deposition is</p> <p>25 taken;</p> <p>Further, I am not a relative nor an employee of</p> <p>any attorney of record in this cause, nor am I</p> <p>financially or otherwise interested in the outcome of</p> <p>the action.</p>

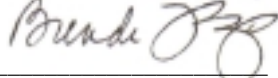
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Dwight Steward, Ph.D. - 5/13/2022

253

1 Certified to by me this 20TH day of MAY, 2022,

2 

3
4 BRENDA J. WRIGHT, Texas CSR No. 1780

5 Expiration Date: 08-31-22

6 WRIGHT WATSON & ASSOCIATES

7 Firm Registration No. 225

8 Expiration Date: 12-31-23

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14 JOB NO. DSTEWARD05132022

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	Case No. 1:20-cv-00969-DAE
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	

**DEFENDANT INTERNATIONAL BUSINESS MACHINES CORPORATION'S
MOTION TO EXCLUDE EXPERT REPORT AND TESTIMONY OF MARK RAMBIN**

EXHIBIT D to Exhibit 1

Titon Hoque - 1/27/2022

1	1	3
1	IN THE UNITED STATES DISTRICT COURT	
2	FOR THE WESTERN DISTRICT OF TEXAS	
	AUSTIN DIVISION	
3	CHARLES TOWNSLEY, MICHAEL)	
	SAURO, WALTER NOFFSINGER,)	
4	ROSA DAVIDSON, MICHAEL)	
	KELLY, TITON HOQUE, JANET)	
5	GELPHMAN, THANH DO,)	
)	
6	Plaintiffs,)	
)	
7)	
8)	
9)	
10	vs.)	
	CIVIL ACTION	
11	NO. 1:20-CV-00969-LY	
12)	
13)	
14	INTERNATIONAL BUSINESS)	
	MACHINES CORPORATION,)	
15)	
16	Defendant.)	
17)	
18	*****	
19	ORAL AND VIDEOTAPED DEPOSITION OF	
20	TITON HOQUE	
21	VOLUME 1	
22	JANUARY 27, 2022	
23	(Reported Remotely)	
24	*****	
25		
2	2	4
1	ORAL AND VIDEOTAPED DEPOSITION OF TITON HOQUE,	
2	produced as a witness at the instance of the	
3	DEFENDANT, and duly sworn, was taken in the	
4	above-styled and numbered cause on January 27, 2022,	
5	from 9:35 a.m. to 6:25 p.m., before Jodi Cardenas,	
6	CSR, RPR, in and for the State of Texas, reported by	
7	computerized stenotype machine at the residence of	
8	TITON HOQUE, [REDACTED] Elgin,	
9	Texas, pursuant to the Federal Rules of Civil	
10	Procedure, the current Emergency Order regarding the	
11	COVID-19 State of Disaster, and the provisions stated	
12	on the record or attached hereto.	
13		
14		
15		
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17		
18		
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20		
21		
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23		
24		
25		
	1	4
	APPEARANCES	
	FOR THE PLAINTIFFS:	
	Ms. Heidi A. Coughlin	
	WRIGHT & GREENHILL, PC	
	900 Congress Avenue, Suite 500	
	Austin, Texas 78701	
	(512) 476-4600	
	hcoughlin@w-g.com	
	-and-	
	Mr. Austin Harris Kaplan	
	KAPLAN LAW FIRM, PLLC	
	2525 Wallingwood Drive, Building 14	
	Austin, Texas 78746	
	(512) 553-9390	
	akaplan@kaplanlawatx.com	
	FOR THE DEFENDANT:	
	Mr. Andrew Broadaway	
	CORNELL, SMITH, MIERL, BRUTOCAO & BURTON, LLP	
	1607 West Avenue	
	Austin, Texas 78701	
	(512) 328-1540	
	abroadaway@cornellsmith.com	
	ALSO PRESENT:	
	Ms. Meghan Encinias, Videographer	
	STIPULATIONS	
	The attorneys for all parties present	
	stipulate and agree to the following items:	
	That the deposition of TITON HOQUE is	
	being taken pursuant to Notice;	
	That the deposition is being taken	
	pursuant to the Federal Rules of Civil Procedure;	
	That the original transcript will be	
	submitted to the witness' attorney, MS. HEIDI A.	
	COUGHLIN;	
	That the witness or the witness' attorney	
	will return the signed transcript to the court	
	reporter within 30 days of the date the transcript is	
	provided to the witness' attorney. If not returned,	
	the witness may be deemed to have waived the right to	
	make the changes, and an unsigned copy may be used as	
	though signed.	

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Titon Hoque - 1/27/2022

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6	<p>1 EXHIBITS (CONT'D)</p> <p>2 NO. DESCRIPTION PAGE</p> <p>3 8..... 70</p> <p>4 IBM Offer Letter</p> <p>5 9..... 76</p> <p>6 Mr. Hoque's Resume</p> <p>7 10..... 78</p> <p>8 ACC Payroll Printout</p> <p>9 11..... 82</p> <p>10 ACC New Position Offer Letter</p> <p>11 12..... 107</p> <p>12 Organizational Structure and</p> <p>13 Mr. Hoque's Direct Reports</p> <p>14 13..... 132</p> <p>15 E-mail Correspondence,</p> <p>16 "Subject: AECOM - Updated List"</p> <p>17 14..... 152</p> <p>18 E-mail Correspondence,</p> <p>19 "Subject: S4V Status"</p> <p>20 15..... 153</p> <p>21 E-mail - Concord Training Meeting</p> <p>22 Slide</p> <p>23 16..... 155</p> <p>24 Concord Training Slide Deck</p> <p>25 17..... 171</p> <p>18 E-mail Correspondence,</p> <p>19 "Subject: Identification Worksheet"</p> <p>20 18..... 172</p> <p>21 Tse Selection Worksheet</p> <p>22 19..... 179</p> <p>23 Paiz Selection Worksheet</p> <p>24 21..... 183</p> <p>25 E-mail Correspondence,</p> <p>"Subject: AECOM S4V"</p>	8	<p>1 (REPORTER'S NOTE: Please note this</p> <p>2 deposition was taken remotely via Zoom;</p> <p>3 therefore, due to the quality of</p> <p>4 transmission of data via Zoom</p> <p>5 videoconference, audio distortions,</p> <p>6 internet connections freezing,</p> <p>7 overspeaking, extraneous room noise,</p> <p>8 et cetera, unintelligibles or</p> <p>9 inaudibles may have created</p> <p>10 inaccuracies in the transcription.)</p> <p>11 (Federal Rules 30(b)(5)(A) and (C) were</p> <p>12 waived by all counsel present)</p> <p>13 THE VIDEOGRAPHER: We are on the record</p> <p>14 January 27th, 2022. And the time is 9:35 a.m. Here</p> <p>15 begins Tape 1 of the video deposition of Titon Hoque.</p> <p>16 This video deposition is being held via Zoom video</p> <p>17 conferencing.</p> <p>18 Will counsel please identify yourselves</p> <p>19 for the record?</p> <p>20 MS. COUGHLIN: Heidi Coughlin with</p> <p>21 Wright & Greenhill on behalf of the plaintiff. Also</p> <p>22 with me is Austin Kaplan. He is also here on behalf</p> <p>23 of the plaintiff.</p> <p>24 MR. BROADAWAY: And I'm Andrew</p> <p>25 Broadway with Cornell Smith, and I am here on behalf</p>

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Titon Hoque - 1/27/2022

<p>9</p> <p>1 of Defendant IBM.</p> <p>2 THE VIDEOGRAPHER: Okay. Will the</p> <p>3 court reporter please swear in the witness?</p> <p>4 THE REPORTER: And real quick, I would</p> <p>5 just like to note that I am administering the oath</p> <p>6 and reporting the deposition remotely by stenographic</p> <p>7 means from my residence within the state of Texas,</p> <p>8 and the witness has been identified to me through</p> <p>9 attestation of counsel. And the witness is located</p> <p>10 as his residence at 366 North County Line Road in</p> <p>11 Elgin, Texas.</p> <p>12 Mr. Hoque, will you raise your right</p> <p>13 hand, please?</p> <p>14 TITON HOQUE,</p> <p>15 having been first duly sworn, testified as follows:</p> <p>16 EXAMINATION</p> <p>17 BY MR. BROADAWAY:</p> <p>18 Q. Good morning, Mr. Hoque. For -- for the</p> <p>19 record, would you please state and spell your full</p> <p>20 name?</p> <p>21 A. Yeah. It's Titon Hoque, T-I-T-O-N</p> <p>22 H-O-Q-U-E.</p> <p>23 Q. Have you ever gone by another name?</p> <p>24 A. I have. By Rashed.</p> <p>25 Q. Would you spell that, please?</p>	<p>11</p> <p>1 A. Yes.</p> <p>2 Q. Especially because -- well, scratch that.</p> <p>3 You're aware that there's going to be a</p> <p>4 court reporter taking down everything that you and I</p> <p>5 and your counsel say. Is that right?</p> <p>6 A. (Witness nods head).</p> <p>7 Q. And it's also being videotaped?</p> <p>8 A. (Witness nods head).</p> <p>9 Q. It's -- it's especially important because</p> <p>10 we're -- we're here today by Zoom remote -- remotely,</p> <p>11 that you give audible responses. So sometimes in the</p> <p>12 question-and-answer format, it's really easy to give</p> <p>13 "uh-huh" or nod or kind of give nonverbal responses.</p> <p>14 It's hard -- it's hard for the court reporter to take</p> <p>15 all that down. I'll probably do it; you'll probably</p> <p>16 do it. If -- if I remind you to try to make an</p> <p>17 audible response, it's -- it's only for that reason,</p> <p>18 so bear with -- bear with us on that, but --</p> <p>19 A. Okay.</p> <p>20 Q. -- please try to -- please try to make your</p> <p>21 responses audible.</p> <p>22 Another important facet of the -- the</p> <p>23 video deposition is, because of the slight lag time</p> <p>24 involved, you know, would you please try to let --</p> <p>25 wait and let me finish the question I'm answering</p>
<p>10</p> <p>1 A. R-A-S-H-E-D.</p> <p>2 Q. So as -- as I just told you before we got on</p> <p>3 the record, I -- my name is Andrew Broadaway. I am</p> <p>4 one of the lawyers representing IBM in this matter.</p> <p>5 And I just want to start off with a couple of the</p> <p>6 ground rules about this deposition and -- and a</p> <p>7 little bit of background. So my -- my purpose for</p> <p>8 being here today is to ask you a series of questions</p> <p>9 regarding your claims in the lawsuit you brought</p> <p>10 against IBM and your reasons for bringing the</p> <p>11 lawsuit. Do you understand that?</p> <p>12 A. Yes, I do.</p> <p>13 Q. And do you understand that the oath that you</p> <p>14 just took at the beginning is the same -- same oath</p> <p>15 that you would take if you were testifying in front</p> <p>16 of a judge or a jury?</p> <p>17 A. Yes.</p> <p>18 Q. And do you understand that this -- the</p> <p>19 testimony that you give today may be used in the</p> <p>20 eventual trial in this matter or for other purposes</p> <p>21 in -- in this case?</p> <p>22 A. Yes, I do.</p> <p>23 Q. So do you understand that it's important to</p> <p>24 give the most complete and truthful testimony that</p> <p>25 you can here today?</p>	<p>12</p> <p>1 {sic}, and I'll try to allow you to finish your</p> <p>2 answer. There -- there may be times if I feel like</p> <p>3 you're not answering my question fully. I may ask</p> <p>4 you to focus your attention on the question that I</p> <p>5 asked, but I'll try to -- I'll try to let you finish</p> <p>6 your answer. Same goes for your counsel -- after I</p> <p>7 ask a question, your counsel may at various times</p> <p>8 object and lodge various objections on the record.</p> <p>9 But you understand that you're still required to</p> <p>10 answer the question, unless your counsel specifically</p> <p>11 instructs you not to answer.</p> <p>12 A. Yes.</p> <p>13 Q. Throughout the course of today, there may be</p> <p>14 questions that I ask poorly that you don't understand</p> <p>15 that are unclear. If there's anything that I ask</p> <p>16 that is unclear or you don't -- don't understand,</p> <p>17 would you please ask me to clarify the question?</p> <p>18 A. Yes, I will do that.</p> <p>19 Q. Okay. And if you -- if you don't, I'm going</p> <p>20 to assume that you understand -- that you understand</p> <p>21 the question. Okay?</p> <p>22 A. Understood.</p> <p>23 Q. So a final -- final point today -- I'm --</p> <p>24 I'm going to try to move through the questions I have</p> <p>25 as quickly as I can, but we're probably going to go</p>

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Titon Hoque - 1/27/2022

<p style="text-align: right;">77</p> <p>1 on the section about IBM?</p> <p>2 Q. (BY MR. BROADAWAY) This states that you</p> <p>3 were employed with IBM from February 2017 to August</p> <p>4 of 2017. That's what it says. Right?</p> <p>5 A. Yeah.</p> <p>6 Q. But that's not accurate, is it?</p> <p>7 A. Well, it probably would have been</p> <p>8 technically the end of July.</p> <p>9 Q. Wasn't your last day with IBM in July of</p> <p>10 2018?</p> <p>11 A. Oh, I have the year incorrect and the month.</p> <p>12 Q. Okay. I -- I was just -- I wanted to ask</p> <p>13 why -- why that was incorrect, why -- why that date</p> <p>14 was --</p> <p>15 A. Oh, that was just oversight on my part.</p> <p>16 Q. If you scroll up a little bit, and it</p> <p>17 says -- it shows that you have worked -- you started</p> <p>18 working with --</p> <p>19 A. Oh, and --</p> <p>20 Q. -- Austin Community College in August of</p> <p>21 2017 to present?</p> <p>22 A. No. I started working there in December of</p> <p>23 2018 -- or I think January of 2019 -- no, it was</p> <p>24 December of 2018 to present.</p> <p>25 Q. So was -- was that just another typo?</p>	<p style="text-align: right;">79</p> <p>1 have any idea why ACC would reflect that you were</p> <p>2 hired in -- in May of 2019?</p> <p>3 A. So this -- what I would say is that the way</p> <p>4 that ACC handles consultants versus full-time</p> <p>5 employees is not accurately reflected in their ERP</p> <p>6 systems.</p> <p>7 Q. I see. Did you --</p> <p>8 A. And this -- even today --</p> <p>9 Q. Did you have a -- a consulting agreement</p> <p>10 with Austin Community College?</p> <p>11 A. Not with Austin Community College.</p> <p>12 Q. Who did you have -- did you have a</p> <p>13 consulting agreement in place with anyone while you</p> <p>14 were working at Austin Community College?</p> <p>15 A. Yes.</p> <p>16 Q. And what entity was that?</p> <p>17 A. That was Beacon Hills Staffing.</p> <p>18 Q. Is that a staffing agency?</p> <p>19 A. Yes.</p> <p>20 Q. So you -- did you have an agreement -- were</p> <p>21 you an employee of Beacon Hill?</p> <p>22 A. No.</p> <p>23 Q. They -- they placed you at Austin Community</p> <p>24 College?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">78</p> <p>1 A. It was a typo, complete typo. I think when</p> <p>2 I was joining ACC, they were requiring me to update</p> <p>3 my resumé. I did it while I was in another meeting,</p> <p>4 did it very quickly, and wasn't paying attention to</p> <p>5 the details.</p> <p>6 Q. So you -- you said you think you started in</p> <p>7 December of 2017 -- or excuse me. December of 2018</p> <p>8 or January 2019 with -- with Austin Community</p> <p>9 College?</p> <p>10 A. Correct.</p> <p>11 MR. BROADAWAY: Okay. Can we just look</p> <p>12 at Exhibit No. 10 for a second?</p> <p>13 (Exhibit No. 10 marked)</p> <p>14 Q. (BY MR. BROADAWAY) Okay. And do -- do you</p> <p>15 see there's -- there's a Bates number -- there's</p> <p>16 actually two numbers in the lower right-hand corner</p> <p>17 of this. And I'll -- I'll proffer to you that this</p> <p>18 was produced by Austin Community College as part of a</p> <p>19 subpoena in this litigation. So I -- I just -- just</p> <p>20 want to ask you about something that is in the upper</p> <p>21 right-hand corner where it says, "Hire date." Do you</p> <p>22 see where it says "hire date" in the upper right-hand</p> <p>23 corner underneath the Social Security number?</p> <p>24 A. Yes.</p> <p>25 Q. So it says, "Hire date, 5/1/2019." Do you</p>	<p style="text-align: right;">80</p> <p>1 Q. Did you have an -- any sort of written</p> <p>2 agreement with Beacon Hill?</p> <p>3 A. Yes.</p> <p>4 Q. And when did that agreement start?</p> <p>5 A. In December of 2018.</p> <p>6 Q. Did you -- did you provide a copy of that</p> <p>7 agreement to your attorneys?</p> <p>8 A. No.</p> <p>9 Q. And how -- how did Beacon Hill come to place</p> <p>10 you at Austin Community College?</p> <p>11 MS. COUGHLIN: Objection; calls for</p> <p>12 speculation, but go ahead.</p> <p>13 THE WITNESS: I believe it was -- I</p> <p>14 don't remember if it was a posting on LinkedIn that I</p> <p>15 had applied to or if a recruiter from Beacon Hill</p> <p>16 reached out to me.</p> <p>17 Q. (BY MR. BROADAWAY) Okay. So would --</p> <p>18 would -- did Beacon Hill accept jobs that you had</p> <p>19 identified and tried to place you in jobs that you</p> <p>20 had identified?</p> <p>21 A. I don't understand the question.</p> <p>22 Q. I'm just trying to -- to figure out how you</p> <p>23 found the job at Austin Community College.</p> <p>24 A. So either they had posted the job and I</p> <p>25 applied for it or one of their recruiters told me</p>

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<p style="text-align: right;">81</p> <p>1 about a job at Austin Community College. I don't</p> <p>2 remember which one it was.</p> <p>3 Q. Okay. Do you know how much money you were</p> <p>4 making when you first started with Austin Community</p> <p>5 College?</p> <p>6 A. Through Beacon Hill?</p> <p>7 Q. Yes. Well, I -- I -- how much were you</p> <p>8 getting paid for your work when you were working for</p> <p>9 Austin Community College?</p> <p>10 A. I think originally I was being paid by</p> <p>11 Beacon Hill \$90 per hour.</p> <p>12 Q. Okay. So -- and -- and to be clear, your</p> <p>13 resumé only reflects Austin Community College.</p> <p>14 Right?</p> <p>15 A. Correct.</p> <p>16 Q. It -- it does not reflect Beacon Hill?</p> <p>17 A. Correct.</p> <p>18 Q. So did you get tax documents from Beacon</p> <p>19 Hill?</p> <p>20 A. I did.</p> <p>21 Q. Were they W-2s?</p> <p>22 A. No.</p> <p>23 Q. Were they 1099s?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Did you submit invoices to Beacon</p>	<p style="text-align: right;">83</p> <p>1 A. Correct.</p> <p>2 Q. Okay. And -- and what was the job that you</p> <p>3 were doing during that period?</p> <p>4 A. During the consulting period?</p> <p>5 Q. Yes.</p> <p>6 A. I was in multiple roles or held multiple</p> <p>7 titles during that time.</p> <p>8 Q. Okay. Can you tell me about them?</p> <p>9 A. The -- what would you like me to tell you</p> <p>10 about them?</p> <p>11 Q. Well, let's -- I mean, let's start with one</p> <p>12 of the titles.</p> <p>13 A. The titles?</p> <p>14 Q. Let's start with one of the titles.</p> <p>15 A. Okay. The first one was a manager for</p> <p>16 business intelligence.</p> <p>17 Q. And what did you do for that role?</p> <p>18 A. I was to assemble the business intelligence</p> <p>19 strategy for Austin Community College.</p> <p>20 Q. Okay. And how long did that last?</p> <p>21 A. About the first six months.</p> <p>22 Q. And while you were doing that, did -- did</p> <p>23 you hold another title?</p> <p>24 A. So I did not while I held that title.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">82</p> <p>1 Hill?</p> <p>2 A. Yes, I did.</p> <p>3 Q. Do you have copies of those invoices?</p> <p>4 A. I believe I can still get to them because I</p> <p>5 use an online service to generate invoices that I no</p> <p>6 longer use.</p> <p>7 Q. Okay. So from January 2019, how long did</p> <p>8 you remain a consultant for IBM -- excuse me, for</p> <p>9 ACC?</p> <p>10 A. From that time until February of 2020.</p> <p>11 Q. And what happened in February of 2020?</p> <p>12 A. In February of -- just a moment. Let me</p> <p>13 think. Am I getting my years straight?</p> <p>14 Q. You know, I think I may have something</p> <p>15 that -- that may refresh your recollection.</p> <p>16 MR. BROADAWAY: Can we look at Exhibit</p> <p>17 No. 11?</p> <p>18 (Exhibit No. 11 marked)</p> <p>19 MR. BROADAWAY: Can -- can we just kind</p> <p>20 of blow up the first half of that page?</p> <p>21 THE WITNESS: Oh, yeah. I was getting</p> <p>22 my year incorrect, so it was February 1st of 2021.</p> <p>23 Q. (BY MR. BROADAWAY) Okay. So between</p> <p>24 January 2019 about February 2021, you were a</p> <p>25 consultant for ACC through Beacon Hill?</p>	<p style="text-align: right;">84</p> <p>1 A. But I transitioned into another role.</p> <p>2 Q. And what was that?</p> <p>3 A. The director of development and data.</p> <p>4 Q. Okay. And what -- and when you held that --</p> <p>5 when you held that title, approximately when was</p> <p>6 that?</p> <p>7 A. I think that was in July of 2019.</p> <p>8 Q. And did you have employees reporting to you</p> <p>9 as -- in that director title?</p> <p>10 A. Yes.</p> <p>11 Q. And did you have any other titles at that</p> <p>12 time when you held that title?</p> <p>13 A. Not during.</p> <p>14 Q. Okay. So after that, did you transition in</p> <p>15 to another role?</p> <p>16 A. Yes. And that's the one that is listed on</p> <p>17 my resumé, as well.</p> <p>18 Q. Okay. And what -- what is that?</p> <p>19 A. The associate vice president --</p> <p>20 Q. Okay.</p> <p>21 A. -- of solutions delivery and business</p> <p>22 intelligence.</p> <p>23 Q. So you were an associate vice president</p> <p>24 while a consultant for an outside company?</p> <p>25 A. Correct.</p>

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<p style="text-align: right;">269</p> <p>1 record at 5:44 p.m. 2 (Off the record) 3 THE VIDEOGRAPHER: Okay. We are back 4 on the record at 5:56 p.m. This begins Tape 7. 5 Q. (BY MR. BROADAWAY) Okay. Were you able to 6 take one last break, Mr. Hoque? 7 A. Yes, I was. 8 Q. It's been a long day, but you remember 9 you're still under oath? 10 A. Yes. 11 Q. Thank you so much. Just -- just a few 12 couple last -- last things. 13 MR. BROADAWAY: Can we look at 14 Exhibit 7, which is the first amended complaint? And 15 when you pull it up, Meghan, I would like to go to 16 Page -- Page 36, which is one of the last pages -- 17 second to last page. 18 Q. (BY MR. BROADAWAY) So, Mr. Hoque, have 19 you -- have you reviewed this page of the complaint? 20 Do you remember ever looking at this closely? 21 A. Yeah. I did read this over. 22 Q. Okay. Are you -- so it's referring to 23 plaintiffs, plural, so -- so all the other plaintiffs 24 are -- are lumped in with you. But are you asking 25 that IBM be ordered to reinstate your employment with</p>	<p style="text-align: right;">271</p> <p>1 Q. Okay. 2 A. My brother's wife. 3 Q. Okay. 4 A. And my mother. 5 Q. Okay. And -- and what -- and what did you 6 tell them about your level of grief? 7 A. And my inlaws. 8 Q. And your inlaws. Okay. And what did you -- 9 what did you tell them -- did you tell all those 10 people the same thing? 11 A. Mostly. 12 Q. And -- and what did you tell them? 13 A. That what I went through was a very 14 difficult time for me. It was very stressful. It 15 was one of the most stressful events that I've gone 16 through, that it really shook my confidence -- 17 Q. Uh-huh. 18 A. -- and really hurt me personally. 19 Q. How did it hurt you personally? 20 A. That what was done to me was wrong and that 21 I didn't really deserve what was done to me. 22 Q. And when you say what was done to you, you 23 mean being laid off from your job at IBM? 24 A. Yes. 25 Q. Okay. Is there anything else that you told</p>
<p style="text-align: right;">270</p> <p>1 IBM? 2 MS. COUGHLIN: Objection to the extent 3 it calls for legal analysis or conclusion. 4 Q. (BY MR. BROADAWAY) Do you know what 5 "reinstate" means, Mr. Hoque? 6 A. To put me back into my same position. 7 Q. Uh-huh. Do you -- and do you see -- do you 8 see Paragraph 3 that -- that we're looking at? 9 A. Yes, I do. 10 Q. So that -- that -- it says all -- 11 plaintiffs, plural, but I'm asking you if you want to 12 be reinstated to your former position at IBM? 13 A. I do not wish to be. 14 Q. Okay. And then I want -- I want to focus 15 on -- on Section 5, Paragraph 5 now. This is kind of 16 in the middle of the screen. Are you seeking 17 compensatory damages for grief? 18 A. Yes. 19 Q. Have you ever talked to anybody about your 20 grief other than the doctor you previously discussed? 21 A. Family. 22 Q. Which members of your family? 23 A. My wife. 24 Q. Who else? 25 A. My brother.</p>	<p style="text-align: right;">272</p> <p>1 them? 2 A. That I was having difficulty with it, with 3 trying to move forward. 4 Q. How did that manifest itself? 5 A. Just trying to stay positive -- 6 Q. Uh-huh. 7 A. -- and have a positive outlook, trying to be 8 positive in my manners, the way I go about 9 interviewing with other companies in speaking with 10 other professionals and so forth. 11 Q. Uh-huh. And would you -- so in looking at 12 the list that we're looking at of the next several 13 damages, inconvenience, is -- is that similar to the 14 grief? What -- what's inconvenienced? What do you 15 mean by that? Are you -- are you seeking damages for 16 inconvenience? 17 A. Yes. 18 Q. And what -- and what does that mean? 19 A. Several inconveniences financially just to 20 be able to have the convenience of paying for things. 21 Q. Okay. 22 A. Like mortgage, car payments, insurance. 23 Q. Did you miss any mortgage payments? 24 A. I don't remember exactly -- I know I was 25 late. I don't remember if I actually missed.</p>

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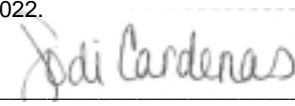
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<p style="text-align: right;">289</p> <p>1 five minutes.</p> <p>2 MS. COUGHLIN: Yeah. And I'm going to</p> <p>3 go on the record and object to this because I'm</p> <p>4 pretty sure you marked all the Ed Fung documents</p> <p>5 attorneys' eyes only.</p> <p>6 MR. BROADAWAY: I -- I have no idea,</p> <p>7 but I will give you back these five minutes.</p> <p>8 I will pass the witness.</p> <p>9 MS. COUGHLIN: And I'll reserve for the</p> <p>10 time of trial.</p> <p>11 THE VIDEOGRAPHER: Okay. We're off the</p> <p>12 record at 6:25 p.m. This concludes the deposition.</p> <p>13 (Deposition concluded at 6:25 p.m.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">291</p> <p>1 I, TITON HOQUE, have read the foregoing deposition</p> <p>2 and hereby affix my signature that same is true and</p> <p>3 correct, except as noted above.</p> <p>4</p> <p>5 _____</p> <p>6 TITON HOQUE</p> <p>7 THE STATE OF _____)</p> <p>8 COUNTY OF _____)</p> <p>9</p> <p>10 Before me, _____, on this</p> <p>11 day personally appeared TITON HOQUE, known to me or</p> <p>12 proved to me on the oath of _____ or through</p> <p>13 _____ (description of identity card or</p> <p>14 other document) to be the person whose name is</p> <p>15 subscribed to the foregoing instrument and acknowledged</p> <p>16 to me that he/she executed the same for the purpose and</p> <p>17 consideration therein expressed.</p> <p>18 Given under my hand and seal of office on this</p> <p>19 _____ day of _____, _____.</p> <p>20</p> <p>21 _____</p> <p>22 NOTARY PUBLIC IN AND FOR</p> <p>23 THE STATE OF _____</p> <p>24</p> <p>25 My Commission Expires: _____</p>
<p style="text-align: right;">290</p> <p>1 CHANGES AND CORRECTIONS</p> <p>2 WITNESS NAME: TITON HOQUE</p> <p>3 DATE: JANUARY 27, 2022</p> <p>4 Reason Codes: (1) to clarify the record; (2) to</p> <p>5 conform to the facts; (3) to correct a transcription</p> <p>6 error; (4) (please explain).</p> <p>7 PAGE/LINE CHANGE REASON CODE</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>	<p style="text-align: right;">292</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE WESTERN DISTRICT OF TEXAS</p> <p>3 AUSTIN DIVISION</p> <p>4 CHARLES TOWNSLEY, MICHAEL)</p> <p>5 SAURO, WALTER NOFFSINGER,)</p> <p>6 ROSA DAVIDSON, MICHAEL)</p> <p>7 KELLY, TITON HOQUE, JANET)</p> <p>8 GELPHMAN, THANH DO,)</p> <p>9)</p> <p>10)</p> <p>11)</p> <p>12)</p> <p>13)</p> <p>14)</p> <p>15)</p> <p>16)</p> <p>17)</p> <p>18)</p> <p>19)</p> <p>20)</p> <p>21)</p> <p>22)</p> <p>23)</p> <p>24)</p> <p>25)</p> <p>1 vs.) CIVIL ACTION</p> <p>2) NO. 1:20-CV-00969-LY</p> <p>3)</p> <p>4)</p> <p>5)</p> <p>6)</p> <p>7)</p> <p>8)</p> <p>9)</p> <p>10)</p> <p>11)</p> <p>12)</p> <p>13)</p> <p>14)</p> <p>15)</p> <p>16)</p> <p>17)</p> <p>18)</p> <p>19)</p> <p>20)</p> <p>21)</p> <p>22)</p> <p>23)</p> <p>24)</p> <p>25)</p> <p>1 INTERNATIONAL BUSINESS)</p> <p>2 MACHINES CORPORATION,)</p> <p>3)</p> <p>4)</p> <p>5)</p> <p>6)</p> <p>7)</p> <p>8)</p> <p>9)</p> <p>10)</p> <p>11)</p> <p>12)</p> <p>13)</p> <p>14)</p> <p>15)</p> <p>16)</p> <p>17)</p> <p>18)</p> <p>19)</p> <p>20)</p> <p>21)</p> <p>22)</p> <p>23)</p> <p>24)</p> <p>25)</p> <p>1 Defendant.)</p> <p>2)</p> <p>3)</p> <p>4)</p> <p>5)</p> <p>6)</p> <p>7)</p> <p>8)</p> <p>9)</p> <p>10)</p> <p>11)</p> <p>12)</p> <p>13)</p> <p>14)</p> <p>15)</p> <p>16)</p> <p>17)</p> <p>18)</p> <p>19)</p> <p>20)</p> <p>21)</p> <p>22)</p> <p>23)</p> <p>24)</p> <p>25)</p> <p>1 REPORTER'S CERTIFICATION</p> <p>2 ORAL AND VIDEOTAPED DEPOSITION OF</p> <p>3 TITON HOQUE</p> <p>4 VOLUME 1</p> <p>5 JANUARY 27, 2022</p> <p>6 (Reported Remotely)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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Titon Hoque - 1/27/2022

<p style="text-align: right;">293</p> <p>1 I, Jodi Cardenas, Certified Shorthand 2 Reporter in and for the State of Texas, hereby 3 certify to the following: 4 That the witness, TITON HOQUE, was duly 5 sworn by the officer and that the transcript of the 6 oral deposition was transcribed to the best of my 7 ability and is a true record of the testimony given 8 by the witness; 9 I further certify that pursuant to the 10 Federal Rules of Civil Procedure, Rule 30(e)(1) (A) 11 and (B) as well as Rule 30(e)(2) that the signature 12 of the deponent: 13 <u> X </u> was requested by the deponent and/or 14 a party before the completion of the deposition and 15 is to be returned within 30 days from date of receipt 16 of the transcript. If returned, the attached Changes 17 and Corrections and Signature Pages contains any 18 changes and the reasons therefor; 19 _____ was not requested by the deponent or 20 _____ 21 a party before the completion of the deposition. 22 That \$ _____ is the deposition 23 officer's charges for preparing the original 24 deposition transcript and any copies of exhibits 25 charged to DEFENDANT;</p>	<p style="text-align: right;">295</p> <p>1 Certified to by me this 13th day of 2 February, 2022. 3 4  5 6 JODI CARDENAS, RPR, Texas CSR 7594 7 CSR Expiration: 10-31-23 8 WRIGHT WATSON & ASSOCIATES 9 Firm Registration No. 225 10 Firm Expiration: 12-31-21 11 1250 South Capital of Texas Highway 12 Building 3, Suite 400 13 Austin, Texas 78746 14 512-474-4363 15 www.wrightwatson.com 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">294</p> <p>1 That pursuant to information given to the 2 deposition officer at the time said testimony was 3 taken, the following includes all parties of record: 4 FOR THE PLAINTIFFS: 5 Ms. Heidi A. Coughlin 6 WRIGHT & GREENHILL, PC 7 900 Congress Avenue, Suite 500 8 Austin, Texas 78701 9 (512) 476-4600 10 hcoughlin@w-g.com 11 12 -and- 13 14 Mr. Austin Harris Kaplan 15 KAPLAN LAW FIRM, PLLC 16 2525 Wallingwood Drive, Building 14 17 Austin, Texas 78746 18 (512) 553-9390 19 akaplan@kaplanlawatx.com 20 FOR THE DEFENDANT: 21 Mr. Andrew Broadaway 22 CORNELL, SMITH, MIERL, BRUTOCAO & BURTON, LLP 23 1607 West Avenue 24 Austin, Texas 78701 25 (512) 328-1540 26 abroadaway@cornellsmith.com 27 28 I further certify that I am neither counsel 29 for, related to, nor employed by any of the parties 30 or attorneys in the action in which this proceeding 31 was taken; 32 Further, I am not a relative nor an 33 employee of any attorney of record in this cause, nor 34 am I financially or otherwise interested in the 35 outcome of the action.</p>	

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	Case No. 1:20-cv-00969-DAE
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	

**DEFENDANT INTERNATIONAL BUSINESS MACHINES CORPORATION'S
MOTION TO EXCLUDE EXPERT REPORT AND TESTIMONY OF MARK RAMBIN**

EXHIBIT E to Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHARLES TOWNSLEY, MICHAEL \$
SAURO, WALTER NOFFSINGER, \$
ROSA DAVIDSON, MICHAEL \$
KELLY, TITON HOQUE, JANET \$
GELPHMAN, THANH DO, \$
\$
Plaintiffs, \$ CASE NUMBER
\$ 1:20-CV-00969-LY
v. \$
\$
INTERNATIONAL BUSINESS \$
MACHINES CORPORATION, \$
\$
Defendants. \$

* * * * *

THE VIDEOTAPED ORAL DEPOSITION OF
JANET GELPHMAN
January 21, 2022
(Reported Remotely)

* * * * *

ORAL DEPOSITION OF JANET GELPHMAN produced as
a witness at the instance of the Defendant and duly
sworn, was taken in the above styled and numbered cause
on the 21st day of January 2022, from 9:29 a.m. to
11:56 a.m. and from 12:47 p.m. to 4:21 p.m.,
respectively, before Sandra S. Givens, CSR, in and for
the State of Texas, reported by machine shorthand

Page 1

1 method pursuant to the Federal Rules of Civil
2 Procedure, with the witness testifying from her
3 residence in Dallas, Texas.

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A P P E A R A N C E S

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VIDEOPHOTOGRAPHER:
Mr. Hank Widrodt
3stix Productions

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GIVENS COURT REPORTING

6549 Fair Valley Trail, Austin, Texas 78749 (512) 301-7088 sgivens@austin.rr.com

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1	VIDEOGRAPHER: Here begins tape 1
2	of the video deposition of Janet Gelphman. Today's
3	date is January 21st, 2022, and the time is 9:29 a.m.
4	This video deposition is being held via Zoom
5	video-conferencing. Will counsel please identify
6	themselves for the record?
7	MS. COUGHLIN: Heidi Coughlin with
8	the law firm of Wright & Greenhill on behalf of
9	plaintiff Janet Gelphman, and with me is Austin Kaplan
10	also on behalf of the plaintiff.
11	MR. SMITH: And Ted Smith on behalf
12	of IBM, and I'm with the law firm of Cornell Smith
13	Mierl Brutocao Burton.
14	JANET GELPHMAN,
15	having been first duly sworn, testified as follows:
16	EXAMINATION
17	BY MR. SMITH:
18	Q Good morning, Ms. Gelphman. As I have just
19	mentioned a moment ago, I'm an attorney representing
20	IBM in a lawsuit that has been brought by some former
21	employees including yourself. Are you aware that you
22	filed a lawsuit against IBM?
23	A Yes. I'm aware of that.
24	Q Okay. Have you ever had your deposition
25	taken before?
	Page 7

1	A No.
2	Q So because of that and because we're remote
3	it makes it a little bit more challenging, so I'd just
4	kind of like to talk a little bit about how the process
5	works and see if we can kind of get some ground rules
6	that we can both agree on. Is that all right?
7	A Yes.
8	Q So we have a court reporter, Sandy Givens who
9	you can see on your screen, who is taking down your
10	testimony and all of our questions and objections. Do
11	you understand that your testimony here is the same as
12	if we were in a court of law?
13	A Yes.
14	Q And do you understand that you're under oath?
15	A Yes.
16	Q It's important to make sure that we don't
17	talk over each other so that the court reporter,
18	Ms. Givens, can take down each other's -- the testimony
19	clearly. So I will do my best not to talk over you,
20	and I'd just ask the same for you, if that's okay.
21	A That's absolutely okay.
22	Q And you're doing a good job so far, but it's
23	important that you provide verbal responses to my
24	questions. It's difficult for Ms. Givens to take down
25	responses such as a nod of the head or comments like
	Page 8

1 Q Okay. Do you see your gelphman@topocam.com
2 up there?

3 A Yes.

4 Q Is that your email address?

5 A That's correct.

6 Q Okay. And Mr. Francis appears to be -- had
7 been working at IBM at the time you sent this to him on
8 March 11, 2020, right?

9 A That's correct.

10 Q And again, you say that you were referring to
11 starting your job at Blue Yonder; is that right?

12 A Correct.

13 Q And so here -- and did Maui provide a
14 referral to you for Blue Yonder?

15 A Yes, he did.

16 Q And so in here you say, "Hi Maui, thank you
17 so much for your referral for my dream job. I'm
18 starting on Monday."

19 The dream job you're referring to, is
20 that Blue Yonder?

21 A Yes.

22 Q And why did you believe -- why did you feel
23 that Blue Yonder is your dream job?

24 A Because they -- because of my interviews with
25 my boss and, and what kinds of work he was going to

Page 85

1 assign me to, because he was -- had had a lot of
2 experience with heading innovation teams, and so I was
3 excited to work with him and work on innovation with
4 him.

5 Q And are you able to work on things at Blue
6 Yonder that you weren't able to work on in your
7 position at IBM?

8 A Well, it's a completely different --

9 MS. COUGHLIN: Calls for
10 speculation. You can go ahead.

11 A So I, I really don't know how to answer that
12 question. They're two --

13 Q (By Mr. Smith) Well, you knew the -- you
14 know the kind of work that you were doing at IBM,
15 right?

16 A Yes. It involved Clou- Cloud. This is not a
17 Cloud company.

18 Q Right. What kind of company is this?

19 A This is a company that creates applications
20 for the supply chain.

21 Q Okay. So that's my question is, the kind of
22 work you're doing at Blue Yonder now, which is what
23 you've called your dream job, are things that you could
24 not have been working on in your position that you had
25 at IBM; is that right?

Page 86

1 A I think it's more about the opportunity
2 versus what the actual work was. I -- and I think that
3 there was more opportunity to do innovation. I saw
4 that there was -- this is why I say it's my dream.
5 There was opportunity to do innovation there versus --
6 the work at IBM versus the work at, at Blue Yonder.

7 Q But you're doing different kind of work,
8 aren't you, at Blue Yonder than you were doing at IBM?

9 A Yes.

10 Q And how is it different?

11 A I'm working business to business versus at
12 IBM I was -- it's -- it wasn't really business to
13 business. It was creating interfaces for developers.

14 MR. SMITH: Okay. And if we could
15 go to Exhibit 17A as the next exhibit.

16 THE REPORTER: And that'll be
17 Exhibit, that'll be Exhibit 8, Ted.

18 MR. SMITH: Exhibit No. 8? Okay.

19 Q Have you seen this document before,
20 Ms. Gelphman?

21 A Yes.

22 Q And what is this document?

23 A It looks like my W-2.

24 Q For 2020?

25 A Correct.

Page 87

1 Q And it's from Blue Yonder; is that right?

2 A Correct.

3 Q And it shows for 2020 your gross pay being
4 \$119,283.50; is that right?

5 A Correct.

6 Q Actually it looks like your Social Security
7 wages are 120,409.56?

8 A That doesn't make sense. Wait. Oh, with,
9 with the W -- with the Social Security. Are you
10 looking at the bottom-line reported W-2 wages?

11 Q Yeah. In 3 and 5.

12 A Okay. Box 3 and box 5?

13 Q Yes.

14 A So, I mean, you might be better at
15 interpreting this than I am. So whatever figure
16 includes the 401(k); Medicare -- Medi- Medicare wages?
17 Yeah. Medicare wages; Social Security wages. All of
18 that, if that \$120,409 includes both of those, then
19 that would be correct.

20 Q And do you get a -- so do you think you made
21 about \$120,409 in 2020 from Blue Yonder?

22 A It appears that that is what they are saying
23 I made, so I agree with that.

24 Q And were you also able to participate in
25 their 401(k) plan?

Page 88

22 (Pages 85 to 88)

1 A Correct.

2 Q And do you get health insurance benefits

3 through Blue Yonder?

4 A Correct.

5 Q And did you get health insurance benefits

6 through Blue Yonder at the start of your employment

7 there?

8 A Correct.

9 Q What other benefits do you know that you get

10 through Blue Yonder?

11 A Well, I think it says on here that they do a

12 match for your 401(k).

13 Q Okay. And then do you get any kind of life

14 insurance benefits?

15 A Yes. Yes, I do.

16 Q How about disability insurance?

17 A Yes. I think it's on there too, by the way.

18 Q And --

19 A It should be on that receipt.

20 Q So how do you feel like your -- the benefits

21 that you receive at Blue Yonder match up to the

22 benefits that you received when you left IBM?

23 MS. COUGHLIN: Objection to the

24 extent that it calls for a legal conclusion.

25 A So, sorry. I, you know, I don't know how to

Page 89

1 answer that. I think they -- when I left IBM I was

2 making -- I had health insurance, I had disability. I

3 don't remember if life insurance if it was free I took

4 it. So in that respect they didn't do a match, so that

5 part was not the same.

6 Q (By Mr. Smith) IBM did not do a match or

7 Blue Yonder?

8 A IBM did not do a match.

9 Q Okay. So you actually get -- that's a

10 benefit that you're getting at Blue Yonder that you did

11 not get at IBM, right?

12 A Yeah. I think you have to work at IBM for a

13 certain amount before they'll agree to match, and so

14 I'm not sure if the last year I qualified for it or

15 not.

16 Q Okay. And then you also were -- back when

17 you were hired you were eligible for a potential

18 performance incentive bonus, right?

19 A Which company are you referring to?

20 Q Blue Yonder.

21 A I, I, I don't know at the time that I knew

22 that that was possible.

23 Q Let's go back to, it should be I believe

24 Exhibit 6. This is your offer letter again from Blue

25 Yonder, correct, February 26, 2020?

Page 90

1 A Okay.

2 Q And do you see where it says in the third

3 paragraph, "As an associate working at least 30 hours

4 per week, you will be able to participate in the

5 Company's annual performance incentive program at 18

6 percent of your annual salary per year beginning on

7 your date of hire"; is that correct?

8 A That's correct.

9 Q So does that refresh your recollection as to

10 whether you were eligible for an annual performance

11 incentive bonus as well?

12 A Yes. That refreshes my recollection.

13 Q Do you know if you received a bonus in 2020?

14 A They were giving bonus -- they weren't

15 giving -- now, for 2020 or in 2020?

16 Q For -- well, for -- how about for 2020?

17 A Yes. For 2020 I received a bonus.

18 Q Do you know what your bonus was?

19 A I think there's a document that I provided

20 for you that said the amount exactly.

21 Q Okay. But do you recall approximately what

22 it was?

23 A Approximately \$19,000.

24 Q Over and above your regular salary for 2020?

25 A Correct.

Page 91

1 Q So that would have made your annualized --

2 okay. That's fine. \$19,000 over and above what your

3 regular salary of 150,000 per year would have been for

4 2020.

5 A Correct.

6 Q And then did you receive a raise -- have you

7 received any raises during the time you've been at Blue

8 Yonder?

9 A I didn't realize it until I looked at my

10 paycheck, and I guess they raised it by \$3,000 starting

11 in 2021.

12 Q So would that make your current -- is your

13 salary 153,000?

14 A Yes.

15 Q And are you still eligible for the annual

16 bonus?

17 A I'm still eligible.

18 Q I think you testified earlier that you said

19 that your current position is principal; is that right?

20 A Yes. That's actually sort of equivalent to

21 architect, but they moved architect over into the

22 principal area.

23 Q Other than getting the \$3,000 raise, is there

24 any other increase in income or benefits or equity in

25 the company that you get as a principal?

Page 92

1 jobs after you were made aware of your selection in the
2 RA process?
3 A No. Because Ty told me it was fruitless.
4 Q So you didn't, you didn't make any attempt to
5 apply for any internal IBM jobs?
6 A No. Because --
7 MS. COUGHLIN: Asked and answered.
8 A Yeah. The answer doesn't change.
9 MR. SMITH: I don't think I have
10 any further questions, and I'll pass the witness.
11 MS. COUGHLIN: We'll reserve for
12 the time of trial.
13 VIDEOGRAPHER: Off the record at
14 4:21.
15 (4:21 p.m. the proceedings
16 adjourned.)
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Page 225

1 CHANGES AND INSERTIONS
2 JANET GELPHMAN
3 January 21, 2022
4
5 PAGE LINE CHANGE REASON
6 _____
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1 ACKNOWLEDGMENT OF DEPONENT
2
3 I, JANET GELPHMAN, do hereby certify that I have
4 read the foregoing pages and that the same is a correct
5 transcription of the answers given by me to the
6 questions therein propounded, except for the
7 corrections or changes in form or substance, if any,
8 noted in the attached Changes and Insertions page
9 (Errata).
10
11
12
13 JANET GELPHMAN
14
15 DATE
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Page 227

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 AUSTIN DIVISION
4
5 CHARLES TOWNSLEY, MICHAEL \$
6 SAURO, WALTER NOFFSINGER, \$
7 ROSA DAVIDSON, MICHAEL \$
8 KELLY, TITON HOQUE, JANET \$
9 GELPHMAN, THANH DO, \$
10 \$
11 Plaintiffs, \$ CASE NUMBER
12 \$ 1:20-CV-00969-LY
13 v. \$
14 \$
15 INTERNATIONAL BUSINESS \$
16 MACHINES CORPORATION, \$
17 \$
18 Defendants. \$
19
20 REPORTER'S CERTIFICATION OF THE
21 VIDEOTAPED ORAL DEPOSITION OF JANET GELPHMAN
22 January 21, 2021
23 (Reported Remotely)
24 I, Sandra S. Givens, Certified Shorthand Reporter
25 in and for the State of Texas, hereby certify to the
following:
That the witness, JANET GELPHMAN, was duly sworn
by the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;
That the original deposition transcript was
submitted to: JANET GELPHMAN in care of her attorney,
Heidi A. Coughlin;
That a copy of this certificate was served on all

Page 228

57 (Pages 225 to 228)

1 parties and/or the witness shown herein on January 31,
2 2022.

3 I further certify that pursuant to FRCP Rule
4 30(f)(1) that the signature of the deponent was
5 requested by the deponent's attorney before the
6 completion of the deposition and that the transcript be
7 returned within 30 days from the date of receipt. If
8 returned, the attached Changes and Signature page
9 contains any changes and the reasons therefor:

10 That \$ is the deposition officer's
11 charges to the Defendant for preparing the original
12 deposition transcript and any copies of exhibits;

13 That the amount of time used by each party at the
14 deposition is as follows:

15 Edward M. (Ted) Smith - 4 hours, 52 minutes

Heidi A. Coughlin - 0 minutes

16 Austin Harris Kaplan - 0 minutes

17 That pursuant to information given to the
18 deposition officer at the time said testimony was
19 taken, the following includes counsel for all parties
20 of record:

21 Edward M. (Ted) Smith - Attorney for Defendant

Heidi A. Coughlin - Attorney for Plaintiffs

22 Austin Harris Kaplan - Attorney for Plaintiffs

23 I further certify that I am neither counsel for,
24 related to, nor employed by any of the parties or
25 attorneys in the action in which this proceeding was

Page 229

1 taken, and further, that I am not financially or
2 otherwise interested in the outcome of the action.

3 Certified to by me this 31st day of January 2022.

4 GIVENS COURT REPORTING

5 6549 Fair Valley Trail

Austin, Texas 78749

6 (512) 301-7088



7 *Sandra S. Givens*
8 SANDRA S. GIVENS, CSR

9 Certification No. 5000

10 # sg-1923 Certificate Expires 1/31/24

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	Case No. 1:20-cv-00969-DAE
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	

**DEFENDANT INTERNATIONAL BUSINESS MACHINES CORPORATION'S
MOTION TO EXCLUDE EXPERT REPORT AND TESTIMONY OF MARK RAMBIN**

EXHIBIT F to Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHARLES TOWNSLEY, MICHAEL \$
SAURO, WALTER NOFFSINGER, \$
ROSA DAVIDSON, MICHAEL \$
KELLY, TITON HOQUE, JANET \$
GELPHMAN, THANH DO, \$
\$
Plaintiffs, \$ CASE NUMBER
\$ 1:20-CV-00969-LY
v. \$
\$
INTERNATIONAL BUSINESS \$
MACHINES CORPORATION, \$
\$
Defendants. \$

* * * * *

THE VIDEOTAPED ORAL DEPOSITION OF
CHARLES TOWNSLEY
December 9, 2021

* * * * *

THE VIDEOTAPED ORAL DEPOSITION OF CHARLES
TOWNSLEY, produced as a witness at the instance of the
Defendant and duly sworn, was taken in the above styled
and numbered cause on the 9th day of December 2021,
from 9:27 a.m. to 12:11 p.m. and from 1:06 p.m. to 2:40
p.m., respectively, before Sandra S. Givens, CSR, in
and for the State of Texas, reported by machine
shorthand method at the law offices of Wright &

Page 1

1 Greenhill, 900 Congress Avenue, Suite 500, Austin,
2 Texas 78701, pursuant to the Federal Rules of Civil
3 Procedure.

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Page 2

A P P E A R A N C E S

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(Via Speakerphone)

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tsmith@cornellsmith.com

VIDEOGRAPHER:

Mr. Brad Rosauer

18
19
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GIVENS COURT REPORTING

6549 Fair Valley Trail, Austin, Texas 78749 (512) 301-7088 sgivens@austin.rr.com

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Page 6

1	VIDEOGRAPHER: We are on the record
2	on Thursday, December 9th, 2021, at 9:27 a.m.,
3	beginning the video deposition of Charles Townsley.
4	Will counsel please identify themselves for the record?
5	After which the court reporter will swear in the
6	witness.
7	MS. COUGHLIN: Heidi Coughlin with
8	Wright & Greenhill on behalf of the plaintiff, and
9	Austin Kaplan is also attending via phone on behalf of
10	the plaintiff.
11	MR. SMITH: And Ted Smith on behalf
12	of IBM.
13	CHARLES TOWNSLEY,
14	having been first duly sworn, testified as follows:
15	EXAMINATION
16	BY MR. SMITH:
17	Q Good morning, Mr. Townsley.
18	A Good morning, Mr. Smith.
19	Q As I mentioned just a moment ago, my name is
20	Ted Smith, and I'm representing IBM in a lawsuit that
21	has been filed against them and in which you are one of
22	the plaintiffs.
23	A Mm-hm.
24	Q Do you understand that that's the purpose
25	here today, is to discuss that lawsuit?

Page 7

1	A Yes.
2	Q Have you ever had your deposition taken
3	before?
4	A No.
5	Q So let me just kind of talk through a little
6	bit kind of how this'll -- how it works, and, and
7	hopefully if we can agree to some ground rules, it just
8	makes it go smoothly.
9	A Sure.
10	Q So although we're sitting in your counsel's
11	conference room, do you understand that, one, that
12	you're under oath? Do you --
13	A Yes.
14	Q -- understand that?
15	A I do understand that.
16	Q And two, do you understand that your
17	testimony here today is the same and carries the same
18	weight as if we were sitting in a courtroom?
19	A Yes. I consider this a courtroom.
20	Q And we have a court reporter who is here
21	taking down all of the testimony, so it's important,
22	number one, that you answer verbally whenever possible.
23	A Okay.
24	Q It's difficult for her to take down things
25	like nods of the head and things like uh-huh or

Page 8

2 (Pages 5 to 8)

1 go about closing that -- some of that pipeline in order
2 to be able to make my TI.

3 Q And what's TI?

4 A Target incentive. It's a number that
5 basically is your quota plus some other little factors
6 within it.

7 Q And if you reach that number then you are
8 entitled to addi- you're eligible for additional
9 compensation; is that...

10 A Well, actually, any sale you do you're
11 entitled, but as you sell, the higher you -- the more
12 sales you get, there, there's target incentives: When
13 you hit this it says you're going to make this much.
14 Things above that have multipliers on top of that. So
15 if you're twice, you may get two times the amount that
16 you would have gotten if you just made it. Not twice
17 like as in -- it would end up being, like, three times
18 in some circumstances. So the more you sold above your
19 target incentive, the greater the rewards were coming
20 back.

21 Q And was it an important part of your job to
22 have a strong pipeline?

23 A It was important to have pipeline. Pipeline
24 is what enabled you to be able to sell.

25 Q And was that an important factor in your job?

Page 69

1 much -- didn't do much business with IBM.

2 Q Okay. So you -- if I understand your
3 testimony correctly, for awhile that you were working
4 at IBM you only had one account?

5 A I had AT&T. Inside there, there was many
6 different business opportunities.

7 Q But your one account was AT&T.

8 A Mm-hm.

9 Q And how long did you only have one account?

10 A Can I -- yeah. So that would have been from
11 2013 I think through '16.

12 Q Okay. And in two thousand and --

13 A Up to, I think it was, January of '16 --

14 Q Okay.

15 A -- February, something like that.

16 Q And then in 2016 your job role changed such
17 that you no longer just had one account, correct?

18 A Yeah. I moved off of that account. They
19 asked me to move over -- they didn't ask me. They told
20 me to move over to work for George -- daggone,
21 George -- I lost his last name. Anyway, my manager
22 George, which was the manager before Tushar, and they
23 wanted me to foc- the company wanted me to focus on
24 accounts that they really struggled with getting IBM to
25 buy, because of my success at AT&T.

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1 MS. COUGHLIN: Objection, vague.

2 A What does that mean? I thought you just
3 asked me that question. I thought I just answered it.

4 Q (By Mr. Smith) Were, were you -- was your
5 performance rated in part on what your pipeline was?

6 MS. COUGHLIN: Objection vague,
7 calls for speculation.

8 A I don't know what his -- what he used as his
9 construct as to what my --

10 Q (By Mr. Smith) Did --

11 A The way I was rated.

12 Q So you, you don't know what -- whether your
13 pipeline was included in your performance review by
14 your supervisors?

15 A I don't remember it being in there. It may
16 have been. Bottom line is, is I needed to build
17 pipeline. I needed to build pipeline so I could make
18 money.

19 Q Okay.

20 A Unfortunately, I was constantly getting new
21 accounts. Okay? When I -- over the past few years I
22 went from one account to 14, or somewhere around
23 there, and there was, like, 70 when, when Raj became
24 my manager, and they didn't come with very much pipe
25 at all. These were accounts that didn't have

Page 70

1 Q And how many accounts did you receive as a
2 result of that change?

3 A I think I went to around 14, as I remember.
4 I don't know the exact number, but it was somewhere
5 near there.

6 Q Okay.

7 A It did not come with pipe, to speak of.

8 Q So --

9 A I had to build pipe.

10 Q -- in that change you were -- is it fair to
11 say that you were then required to develop a new
12 pipeline?

13 A Absolutely.

14 Q And were you, were you the only employee that
15 you know of who was changed from having one account to
16 multiple accounts during that same timeframe?

17 A I'm not aware of any others that that
18 happened to. It probably did, but I wasn't aware of
19 any.

20 Q Okay. And then did you say you moved from
21 even 14 to more clients?

22 A Yeah. The year I worked for George I built
23 pipe there, closed some pretty nice-size deals in the
24 fourth quarter, and then was moved to Tushar, was
25 handed a whole new set of accounts. And there may have

Page 72

18 (Pages 69 to 72)

1 A Yes.

2 THE REPORTER: Ted, can we take a

3 short break?

4 MR. SMITH: Yeah. Sure.

5 VIDEOGRAPHER: We are off the

6 record, the time is 1:44 p.m.

7 (At 1:44 p.m. the proceedings

8 recessed, continuing at 1:52 p.m.)

9 VIDEOGRAPHER: We are back on the

10 record, the time is 1:52 p.m.

11 Q (By Mr. Smith) Mr. Townsley, I hand you

12 what's been marked as Exhibit No. 15.

13 A Yeah.

14 Q I'll, I'll proffer to you that these are

15 documents that we received from Oracle. Does it seem

16 to show that you received a raise July 1st, 2021 to

17 \$157,000 per year?

18 A Yes. It shows that.

19 Q And is that accurate?

20 A Yes. That is accurate.

21 Q So is your current salary at Oracle \$157,000

22 per year?

23 A That is correct.

24 Q And then you're also entitled -- you're

25 eligible for additional bonuses; is that right?

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1 A A bonus on top of that. Yeah.

2 Q Okay.

3 (Exhibit No. 16 marked.)

4 Q Mr. Townsley, have you seen Exhibit No. 16

5 before?

6 A Yes. What year is this for?

7 Q This is for, should be, two thousand and

8 nine -- 2019. It shows that you earned \$91,741.44; is

9 that right?

10 A That is what it shows. Yes.

11 Q And in 2019 you only worked for part of the

12 year for Oracle, right?

13 A That is correct.

14 Q Okay. And does that -- does this appear to

15 be accurate as to what you earned at --

16 A Yes.

17 Q -- Oracle for 2019?

18 A Yes.

19 (Exhibit No. 17 marked.)

20 Q Mr. Townsley, have you seen what's been

21 marked as Exhibit No. 17 before?

22 A Yes.

23 Q Is this your W-2 form for 2020 from Oracle?

24 A Yes.

25 Q And does it show that you earned \$180,514.88

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1 in 2020?

2 A Yes.

3 Q And does that appear to be accurate as to

4 your earnings from Oracle in 2020?

5 A I believe so. Can I ask a question?

6 Q Sure.

7 A On the bottom of that W-2 form it has my

8 Social Security there but only -- normally it would

9 only be four digits left remaining. They didn't redact

10 enough of it. Do you see --

11 Q Okay.

12 A -- what I'm talking -- is there a way -- I, I

13 suspect these are secure documents and whatnot, right?

14 MS. COUGHLIN: (Nodding head)

15 Q (By Mr. Smith) Yes.

16 A Okay. Then I'm not worried. Thank you.

17 Q Yeah. We won't --

18 MS. COUGHLIN: I'll let you in on a

19 little secret: IBM already knows your Social Security

20 Number.

21 MR. SMITH: Yeah.

22 THE WITNESS: No. I wasn't worried

23 about that. I mean, you know, I just didn't know what

24 happens to these documents --

25 MS. COUGHLIN: Yeah.

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1 THE WITNESS: -- and if they

2 weren't being shredded or whatever, I'd just want to

3 know.

4 Q (By Mr. Smith) Yeah. And I mean --

5 A Not that one digit's going to tell them

6 anything, but...

7 MS. COUGHLIN: No.

8 Q (By Mr. Smith) Well, and if at any time any

9 of these ever need to be filed or anything, we always,

10 we make sure to redact out those kind of --

11 A Thank you.

12 Q -- things. Can't really imagine why this

13 document would be filed, but...

14 (Exhibit No. 18 marked.)

15 THE WITNESS: Thank you.

16 THE REPORTER: You're welcome.

17 Q (By Mr. Smith) Mr. Townsley, I hand you

18 what's been marked as Exhibit No. 18, and I would also

19 proffer to you that we received these documents from

20 Oracle.

21 A I'm sorry. What was the question?

22 Q So actually no question yet.

23 A Okay. Okay. I'm sorry.

24 Q So these are documents that I would proffer

25 to you we've received from Oracle.

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38 (Pages 149 to 152)

1 MS. COUGHLIN: Objection to the
 2 extent that it mischaracterizes the witness's prior
 3 testimony regarding his personal knowledge at that time
 4 that he can remember at this point.
 5 A Yes. And what I said before.
 6 MR. SMITH: I don't think I have
 7 any further questions. I'll pass the witness.
 8 MS. COUGHLIN: And we will reserve
 9 our questions for the time of trial.
 10 MR. SMITH: That's all. Thank you
 11 very much.
 12 THE WITNESS: Thank you.
 13 VIDEOGRAPHER: This concludes
 14 today's deposition. We are off the record, the time is
 15 2:40 p.m. Number of medias used is two.
 16 (2:40 p.m. the proceedings
 17 adjourned.)
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Page 173

1 CHANGES AND INSERTIONS
 2 CHARLES TOWNSLEY
 3 December 9, 2021
 4
 5 PAGE LINE CHANGE REASON
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Page 174

1 ACKNOWLEDGMENT OF DEPONENT
 2
 3 I, CHARLES TOWNSLEY, do hereby certify that I have
 4 read the foregoing pages and that the same is a correct
 5 transcription of the answers given by me to the
 6 questions therein propounded, except for the
 7 corrections or changes in form or substance, if any,
 8 noted in the attached Changes and Insertions page
 9 (Errata).
 10
 11
 12
 13 CHARLES TOWNSLEY
 14
 15 DATE
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 22
 23
 24
 25

Page 175

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE WESTERN DISTRICT OF TEXAS
 3 AUSTIN DIVISION
 4
 5 CHARLES TOWNSLEY, MICHAEL \$
 6 SAURO, WALTER NOFFSINGER, \$
 7 ROSA DAVIDSON, MICHAEL \$
 8 KELLY, TITON HOQUE, JANET \$
 9 GELPHMAN, THANH DO, \$
 10 \$
 11 Plaintiffs, \$ CASE NUMBER
 12 \$ 1:20-CV-00969-LY
 13 v. \$
 14 \$
 15 INTERNATIONAL BUSINESS \$
 16 MACHINES CORPORATION, \$
 17 \$
 18 Defendants. \$
 19
 20
 21 REPORTER'S CERTIFICATION OF THE
 22 ORAL DEPOSITION OF CHARLES TOWNSLEY
 23 December 9, 2021
 24 I, Sandra S. Givens, Certified Shorthand Reporter
 25 in and for the State of Texas, hereby certify to the
 following:
 That the witness, CHARLES TOWNSLEY, was duly sworn
 by the officer and that the transcript of the oral
 deposition is a true record of the testimony given by
 the witness;
 That the original deposition transcript was
 submitted to: CHARLES TOWNSLEY in care of his attorney,
 Heidi A. Coughlin;
 That a copy of this certificate was served on all

Page 176

44 (Pages 173 to 176)

1 parties and/or the witness shown herein on December
 2 17, 2021.

3 I further certify that pursuant to FRCP Rule
 4 30(f)(1) that the signature of the deponent was
 5 requested by the deponent's attorney before the
 6 completion of the deposition and that the transcript be
 7 returned within 30 days from the date of receipt. If
 8 returned, the attached Changes and Signature page
 9 contains any changes and the reasons therefor:

10 That \$ is the deposition officer's
 11 charges to the Defendant for preparing the original
 12 deposition transcript and any copies of exhibits;

13 That the amount of time used by each party at the
 14 deposition is as follows:

15 Edward M. (Ted) Smith - 3 hours, 44 minutes
 Heidi A. Coughlin - 0 minutes
 16 Austin Harris Kaplan - 0 minutes

17 That pursuant to information given to the
 18 deposition officer at the time said testimony was
 19 taken, the following includes counsel for all parties
 20 of record:

21 Edward M. (Ted) Smith - Attorney for Defendant
 Heidi A. Coughlin - Attorney for Plaintiffs
 22 Austin Harris Kaplan - Attorney for Plaintiffs

23 I further certify that I am neither counsel for,
 24 related to, nor employed by any of the parties or
 25 attorneys in the action in which this proceeding was

Page 177



1 taken, and further, that I am not financially or
 2 otherwise interested in the outcome of the action.

3

4 Certified to by me this 17th day of December 2021.

5

6 GIVENS COURT REPORTING
 6549 Fair Valley Trail
 Austin, Texas 78749
 (512) 301-7088

7  

8

9

10 SANDRA S. GIVENS, CSR
 Certification No. 5000
 Certificate Expires 1/31/22

11 # sg-1914

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Page 178

45 (Pages 177 to 178)

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	Case No. 1:20-cv-00969-DAE
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	

**DEFENDANT INTERNATIONAL BUSINESS MACHINES CORPORATION'S
MOTION TO EXCLUDE EXPERT REPORT AND TESTIMONY OF MARK RAMBIN**

EXHIBIT G to Exhibit 1

Thanh Do - 1/11/2022

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Thanh Do - 1/11/2022

<p>5</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3 Appearances..... 3</p> <p>4 Stipulations..... 4</p> <p>5 THANH DO</p> <p>6 Examination by Mr. Broadaway..... 8</p> <p>7 Changes and Corrections..... 269</p> <p>8 Signature Page..... 270</p> <p>9 Reporter's Certificate..... 271</p> <p>10</p> <p>11 EXHIBITS</p> <p>12 NO. DESCRIPTION PAGE</p> <p>13 1..... 44</p> <p>14 Defendant's Request for Production of Documents</p> <p>15 2..... 54</p> <p>16 IBM Diversity Policy</p> <p>17 3..... 60</p> <p>18 E-mail Correspondence,</p> <p>19 "Subject: IBM of lot of those articles"</p> <p>20 4..... 119</p> <p>21 E-mail Correspondence,</p> <p>22 "Subject: Your lab installations"</p> <p>23 5..... 143</p> <p>24 Separation Package</p> <p>25 6..... 153</p> <p>Selection Worksheet</p> <p>7..... 175</p> <p>E-mail Correspondence,</p> <p>"Subject: "Confidential personnel"</p>	<p>7</p> <p>1 (REPORTER'S NOTE: Please note this</p> <p>2 deposition was taken remotely via Zoom;</p> <p>3 therefore, due to the quality of</p> <p>4 transmission of data via Zoom</p> <p>5 videoconference, audio distortions,</p> <p>6 internet connections freezing,</p> <p>7 overspeaking, extraneous room noise,</p> <p>8 et cetera, unintelligibles or</p> <p>9 inaudibles may have created</p> <p>10 inaccuracies in the transcription.)</p> <p>11 (Federal Rules 30(b)(5)(A) and (C) were</p> <p>12 waived by all counsel present)</p> <p>13 THE VIDEOGRAPHER: Here begins Tape 1</p> <p>14 of the video deposition of Thanh Do. Today's date is</p> <p>15 January 11th, 2022. And the time is 9:33 a.m. This</p> <p>16 deposition is being held via Zoom video conferencing.</p> <p>17 Will counsel please identify themselves for the</p> <p>18 record.</p> <p>19 MR. BROADAWAY: Yes. I -- my</p> <p>20 apologies.</p> <p>21 (Overspeaking)</p> <p>22 MS. COUGHLIN: No, it's okay. Here --</p> <p>23 is that all right? All right. I go first.</p> <p>24 MR. BROADAWAY: Please, please.</p> <p>25 MS. COUGHLIN: Heidi Coughlin on behalf</p>
<p>6</p> <p>1 EXHIBITS (CONT'D)</p> <p>2 NO. DESCRIPTION PAGE</p> <p>3 8..... 178</p> <p>4 E-mail Correspondence,</p> <p>5 "Subject: Thanh out of office 5/28 - 6/5"</p> <p>6 9..... 180</p> <p>7 E-mail Correspondence,</p> <p>8 "Subject: Updated submission"</p> <p>9 10..... 192</p> <p>10 E-mail with Job Opportunities</p> <p>11..... 202</p> <p>12 E-mail Correspondence,</p> <p>13 "Subject: Open position for IBMi Early</p> <p>14 Professional Hire (EPH)"</p> <p>15 13..... 229</p> <p>16 TWC Dashboard Printout</p> <p>17..... 239</p> <p>18 2019 TWC 1099</p> <p>19..... 240</p> <p>20 2020 TWC 1099</p> <p>21..... 248</p> <p>22 First Amended Complaint</p> <p>23..... 254</p> <p>24 EEOC Charge</p> <p>25..... 263</p> <p>26 Message from Ms. Ngo</p>	<p>8</p> <p>1 of the plaintiff with Wright & Greenhill, and Austin</p> <p>2 Kaplan is also here on behalf of the plaintiff.</p> <p>3 MR. BROADAWAY: And this is Andrew</p> <p>4 Broadway of Cornel, Smith, Mierl, Brutocao, & Burton</p> <p>5 on behalf of defendant IBM.</p> <p>6 THE VIDEOGRAPHER: Will the court</p> <p>7 reporter please swear in the witness?</p> <p>8 THE REPORTER: Ms. Do, will you raise</p> <p>9 your right hand, please?</p> <p>10 THANH DO,</p> <p>11 having been first duly sworn, testified as follows:</p> <p>12 EXAMINATION</p> <p>13 BY MR. BROADAWAY:</p> <p>14 Q. Ms. Do, for the record, will you please</p> <p>15 state and spell your full name?</p> <p>16 A. My name -- full name -- first name is Thanh,</p> <p>17 T-H-A-N-H. My last name, Do, D-O.</p> <p>18 Q. And have you ever gone by any other name,</p> <p>19 like a maiden name or anything like that?</p> <p>20 A. No.</p> <p>21 Q. Okay. As -- as I mentioned just a minute</p> <p>22 ago, I am one of the lawyers representing IBM in</p> <p>23 this -- in this matter. My purpose for being here</p> <p>24 today is to ask you a series of questions regarding</p> <p>25 your claims in the lawsuit you have brought against</p>

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<p style="text-align: right;">49</p> <p>1 MS. COUGHLIN: Yeah.</p> <p>2 THE VIDEOGRAPHER: Off the record at</p> <p>3 10:31. This concludes Tape 1.</p> <p>4 (Off the record)</p> <p>5 THE VIDEOGRAPHER: We're back on the</p> <p>6 record at 10:41. This begins Tape 2.</p> <p>7 MR. BROADAWAY: Did you -- were you</p> <p>8 able to take a break, Ms. Do?</p> <p>9 THE WITNESS: Yes. Thank you.</p> <p>10 Q. (BY MR. BROADAWAY) And do you understand</p> <p>11 that you're still under oath even after the break</p> <p>12 that we may take?</p> <p>13 A. Yes.</p> <p>14 (Interruption)</p> <p>15 MR. BROADAWAY: Did somebody else say</p> <p>16 something? I heard -- I heard something, but I</p> <p>17 couldn't identify who said it. Okay.</p> <p>18 Q. (BY MR. BROADAWAY) So, Ms. Do, when did you</p> <p>19 first start working at IBM?</p> <p>20 A. I start working for IBM on May 30, 1983,</p> <p>21 right after graduation from Stevens Institute of</p> <p>22 Technology.</p> <p>23 Q. So it was your first job after college?</p> <p>24 A. Yes. It was my first job after college.</p> <p>25 Q. What did you do when you first started</p>	<p style="text-align: right;">51</p> <p>1 IBM Austin. I'm responsible for the performance work</p> <p>2 IBM Power System hardware and AIX operating system</p> <p>3 that developed here in IBM -- IBM Austin.</p> <p>4 Q. And when did --</p> <p>5 THE VIDEOGRAPHER: You guys, I think we</p> <p>6 lost our court reporter. I think she just jumped</p> <p>7 off. Let's go off the record real quick. Off the</p> <p>8 record at 10:44.</p> <p>9 (Off the record)</p> <p>10 THE VIDEOGRAPHER: We're back on the</p> <p>11 record at 10:51.</p> <p>12 Q. (BY MR. BROADAWAY) All right, Ms. Do,</p> <p>13 before we had that technical glitch, I think I had</p> <p>14 asked you, do you have a current resumé?</p> <p>15 A. Yes.</p> <p>16 Q. And when did you last update it?</p> <p>17 A. I last update it around 2019.</p> <p>18 Q. And have you given a copy of that resumé to</p> <p>19 your counsel?</p> <p>20 A. No.</p> <p>21 Q. So can you tell me about your most recent</p> <p>22 job at IBM?</p> <p>23 A. Yes. My most recent job with IBM is with</p> <p>24 IBM Austin. IBM here in Austin. Okay? I'm</p> <p>25 responsible for the performance work on a</p>
<p style="text-align: right;">50</p> <p>1 working for IBM?</p> <p>2 A. I work at the IBM Poughkeepsie in New York,</p> <p>3 and I'm responsible for performance work on the</p> <p>4 mainframe computer and the mainframe operating --</p> <p>5 operating system that developed in IBM Poughkeepsie.</p> <p>6 Q. Have you done performance work your entire</p> <p>7 career at IBM?</p> <p>8 A. Yes.</p> <p>9 Q. Have you ever been a manager?</p> <p>10 A. No.</p> <p>11 (Zoom interruption)</p> <p>12 Q. (BY MR. BROADAWAY) Do you have a current</p> <p>13 resumé?</p> <p>14 A. Yes.</p> <p>15 Q. When did you last update your resumé?</p> <p>16 A. I last update my resumé in 2019 after I left</p> <p>17 IBM.</p> <p>18 Q. Do you know, have you given a copy of your</p> <p>19 updated resumé to your counsel?</p> <p>20 A. No, I did not give him copy of my resumé.</p> <p>21 Q. So I want to fast forward. I know you were</p> <p>22 there for 36 years, so I want to fast forward to the</p> <p>23 last position that you held at IBM. Can you tell me</p> <p>24 about the most recent job you had at IBM?</p> <p>25 A. The most recent job that I had at IBM is the</p>	<p style="text-align: right;">52</p> <p>1 newly-powered hardware system developed here in</p> <p>2 Austin and also the AIX operating system that</p> <p>3 developed here in Austin.</p> <p>4 Q. And what was your title?</p> <p>5 A. My job title is senior software engineer.</p> <p>6 Q. And when did you start that job?</p> <p>7 A. When did I start that job? I've been with</p> <p>8 IBM in Austin around 1995. I'm always in the same</p> <p>9 performance area, so the -- the job that I have in</p> <p>10 that role -- let me think. I would say three or four</p> <p>11 years in that job.</p> <p>12 Q. Three to four years?</p> <p>13 A. Three or four years, yes.</p> <p>14 Q. And what business unit did you work under?</p> <p>15 A. What business unit? I work for the system</p> <p>16 technology group division in IBM.</p> <p>17 Q. And what Band were you in at the time you</p> <p>18 left IBM?</p> <p>19 A. I was at Band 9 when I left IBM.</p> <p>20 Q. And how long had you been at Band 9?</p> <p>21 A. I work remote through Band 9 in July of</p> <p>22 2017, so about two years.</p> <p>23 Q. And were you a Band 8 prior to that?</p> <p>24 A. Yes.</p> <p>25 Q. And how long were you a Band 8?</p>

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Thanh Do - 1/11/2022

<p style="text-align: right;">269</p> <p>1 CHANGES AND CORRECTIONS</p> <p>2 WITNESS NAME: THANH DO</p> <p>3 DATE: JANUARY 11, 2022</p> <p>4 Reason Codes: (1) to clarify the record; (2) to</p> <p>5 conform to the facts; (3) to correct a transcription</p> <p>6 error; (4) (please explain).</p> <p>7 PAGE/LINE CHANGE REASON CODE</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>	<p style="text-align: right;">271</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE WESTERN DISTRICT OF TEXAS</p> <p>3 AUSTIN DIVISION</p> <p>4 CHARLES TOWNSLEY, MICHAEL)</p> <p>5 SAURO, WALTER NOFFSINGER,)</p> <p>6 ROSA DAVIDSON, MICHAEL)</p> <p>7 KELLY, TITON HOQUE, JANET)</p> <p>8 GELPHMAN, THANH DO,)</p> <p>9)</p> <p>10)</p> <p>11)</p> <p>12)</p> <p>13)</p> <p>14)</p> <p>15)</p> <p>16)</p> <p>17)</p> <p>18)</p> <p>19)</p> <p>20)</p> <p>21)</p> <p>22)</p> <p>23)</p> <p>24)</p> <p>25)</p> <p>10 vs.) CIVIL ACTION</p> <p>11) NO. 1:20-CV-00969-LY</p> <p>12)</p> <p>13)</p> <p>14)</p> <p>15)</p> <p>16)</p> <p>17)</p> <p>18)</p> <p>19)</p> <p>20)</p> <p>21)</p> <p>22)</p> <p>23)</p> <p>24)</p> <p>25)</p> <p>14 INTERNATIONAL BUSINESS)</p> <p>15 MACHINES CORPORATION,)</p> <p>16)</p> <p>17)</p> <p>18)</p> <p>19)</p> <p>20)</p> <p>21)</p> <p>22)</p> <p>23)</p> <p>24)</p> <p>25)</p> <p>16 Defendant.)</p> <p>17)</p> <p>18)</p> <p>19)</p> <p>20)</p> <p>21)</p> <p>22)</p> <p>23)</p> <p>24)</p> <p>25)</p> <p>18 REPORTER'S CERTIFICATION</p> <p>19 ORAL AND VIDEOTAPED DEPOSITION OF</p> <p>20 THANH DO</p> <p>21 VOLUME 1</p> <p>22 JANUARY 11, 2022</p> <p>23 (Reported Remotely)</p> <p>24)</p> <p>25)</p>
<p style="text-align: right;">270</p> <p>1 I, THANH DO, have read the foregoing deposition and</p> <p>2 hereby affix my signature that same is true and correct,</p> <p>3 except as noted above.</p> <p>4</p> <p>5 _____</p> <p>6 THANH DO</p> <p>7 THE STATE OF _____)</p> <p>8 COUNTY OF _____)</p> <p>9</p> <p>10 Before me, _____, on this</p> <p>11 day personally appeared THANH DO, known to me or proved</p> <p>12 to me on the oath of _____ or through</p> <p>13 _____ (description of identity card or</p> <p>14 other document) to be the person whose name is</p> <p>15 subscribed to the foregoing instrument and acknowledged</p> <p>16 to me that he/she executed the same for the purpose and</p> <p>17 consideration therein expressed.</p> <p>18 Given under my hand and seal of office on this</p> <p>19 _____ day of _____, _____.</p> <p>20</p> <p>21 _____</p> <p>22 NOTARY PUBLIC IN AND FOR</p> <p>23 THE STATE OF _____</p> <p>24</p> <p>25 My Commission Expires: _____</p>	<p style="text-align: right;">272</p> <p>1 I, Jodi Cardenas, Certified Shorthand</p> <p>2 Reporter in and for the State of Texas, hereby</p> <p>3 certify to the following:</p> <p>4 That the witness, THANH DO, was duly sworn</p> <p>5 by the officer and that the transcript of the oral</p> <p>6 deposition was transcribed to the best of my ability</p> <p>7 and is a true record of the testimony given by the</p> <p>8 witness;</p> <p>9 I further certify that pursuant to the</p> <p>10 Federal Rules of Civil Procedure, Rule 30(e)(1) (A)</p> <p>11 and (B) as well as Rule 30(e)(2) that the signature</p> <p>12 of the deponent:</p> <p>13 _____X_____ was requested by the deponent and/or</p> <p>14 a party before the completion of the deposition and</p> <p>15 is to be returned within 30 days from date of receipt</p> <p>16 of the transcript. If returned, the attached Changes</p> <p>17 and Corrections and Signature Pages contains any</p> <p>18 changes and the reasons therefor;</p> <p>19</p> <p>20 _____ was not requested by the deponent or</p> <p>21 a party before the completion of the deposition.</p> <p>22 That \$ _____ is the deposition</p> <p>23 officer's charges for preparing the original</p> <p>24 deposition transcript and any copies of exhibits</p> <p>25 charged to DEFENDANT;</p>

WRIGHT WATSON & ASSOCIATES

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1 That pursuant to information given to the
 2 deposition officer at the time said testimony was
 3 taken, the following includes all parties of record:

4 FOR THE PLAINTIFFS:

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 WRIGHT & GREENHILL, PC
 6 900 Congress Avenue, Suite 500
 Austin, Texas 78701
 7 (512) 476-4600
 hcoughlin@w-g.com

8 -and-


9 Mr. Austin Harris Kaplan
 KAPLAN LAW FIRM, PLLC
 10 2525 Wallingwood Drive, Building 14
 Austin, Texas 78746
 11 (512) 553-9390
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 12 FOR THE DEFENDANT:
 13 Mr. Andrew Broadaway
 CORNELL, SMITH, MIERL, BRUTOCAO & BURTON, LLP
 14 1607 West Avenue
 Austin, Texas 78701
 15 (512) 328-1540
 abroadaway@cornellsmith.com
 16

17 I further certify that I am neither counsel
 18 for, related to, nor employed by any of the parties
 19 or attorneys in the action in which this proceeding
 20 was taken;

21 Further, I am not a relative nor an
 22 employee of any attorney of record in this cause, nor
 23 am I financially or otherwise interested in the
 24 outcome of the action.
 25

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1 Certified to by me this 8th day of
 2 February, 2022.

3 
 4
 5
 6 JODI CARDENAS, RPR, Texas CSR 7594
 CSR Expiration: 10-31-23
 WRIGHT WATSON & ASSOCIATES
 7 Firm Registration No. 225
 Firm Expiration: 12-31-21
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